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# ONTARIO LABOUR RELATIONS BOARD REPORTS

October 1995





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# ONTARIO LABOUR RELATIONS BOARD REPORTS

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [1995] OLRB REP. OCTOBER**

**EDITOR: RON LEBI**

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.



Typeset, Printed and Bound by Union Labour in Ontario







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**1716-95-U; 1717-95-U Ritva Aikia, Applicant v. Ontario Secondary School Teachers Federation (O.S.S.T.F.), Responding Party**

**Consent to Prosecute - Duty of Fair Representation - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Applicant asserting that processing and resolution of policy grievance having negative impact on her and amounting to repudiation of collective agreement - Board noting that Bill 100 not containing duty of fair representation and that Labour Relations Act not applying to teachers - Duty of fair representation complaint dismissed - Applicant also seeking consent to prosecute union for alleged contravention of Bill 100 provision regarding binding effect of agreements on parties to the collective agreement and on teachers - Application for consent to prosecute dismissed**

**BEFORE:** *Bram Herlich*, Vice-Chair, and Board Members *J. A. Rundle* and *C. McDonald*.

**DECISION OF THE BOARD;** October 2, 1995

1. Board File 1716-95-U is an application filed pursuant to section 91 of the *Labour Relations Act* (the “Act”) wherein it is alleged that numerous other sections of the Act have been violated.

2. By decision dated August 4, 1995 the Board (differently constituted) directed the applicant to set out in writing why in her submission, the Board has jurisdiction to deal with her complaint under section 91.

3. The concern identified by the Board was based on the apprehension, which arose from the applicant’s materials, that the applicant is a “teacher” as defined in the *School Boards and Collective Negotiations Act* (“Bill 100”) and that her application relates to her employment in that capacity. As the Board already set out in the previous decision, the Act generally does not apply to teachers by virtue of section 2(1)(f) which provides:

2.-(1) This Act does not apply,

.....

(f) to a teacher as defined in the *School Boards and Teachers Collective Negotiations Act*, except as provided in that Act;

4. The applicant in her further submissions has not disputed that she is a Bill 100 teacher. Neither has she provided any basis for falling within the exception to the general non-application of the Act to her employment or labour relations rights.

5. It is Bill 100, not the Act, which generally governs labour relations matters involving teachers. While it is true that this Board does have some limited role in administering Bill 100, that role does not, generally speaking, include the enforcement of rights under the Act.

6. Indeed, this Board has consistently held that there is no statutory duty of fair representation under Bill 100 which is equivalent to or even resembles that created by section 69 (one of the sections upon which the applicant relies) and that since the Act and section 69 (and other sections) do not apply to teachers, a complaint by a teacher alleging a violation of section 69 (or other sections of the Act) must be dismissed. (See for example, *Florence M. Casey*, [1981] OLRB Rep. Jan. 113; *Ken Johnson*, [1986] OLRB Rep. Jan. 113; and *Grant Tadman*, [1994] OLRB Rep. Aug. 1096). The logic of these cases applies equally to sections of the Act other than section 69. Cer-

tainly, there is nothing in Bill 100 which suggests that the other sections of the Act relied upon by the applicant - 51, 148(2) (a section restricted in any event to the construction industry), 70 and 71 have any application to teachers.

7. Accordingly, this application is dismissed.

8. Board File 1717-94-U is an application for consent to institute prosecution filed pursuant to section 77(6) of Bill 100. The alleged offence is a contravention of section 58. It is also asserted that the responding party has violated its own constitution. The relevant sections of Bill 100 are sections 58 (alleged to have been violated) and 77 (which governs offences and their prosecution):

58. An agreement is binding upon the board and upon the branch affiliate that is a party to it and upon the teachers employed by the board who are members of the branch affiliate.

77.-(1) Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day upon which the contravention occurs or continues.

(2) The Council and every member association and every board and the Federation and every affiliate and every branch affiliate that contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for each day upon which such contravention occurs or continues.

(3) The contravention of a decision, order, determination, direction, declaration or ruling made under this Act is deemed, for the purposes of this section, to be a contravention of this Act.

(4) Where the Council or a member association or the Federation or an affiliate or a branch affiliate is guilty of an offence under this Act, every officer or representative thereof, and where a board is guilty of an offence under this Act every member of the board, who assents to the commission of the offence shall be deemed to be a party to and guilty of the offence and is liable to a fine under subsection (1) as if he or she had been convicted of an offence under subsection (1).

(5) An information in respect of a contravention of any provision of this Act may be for one or more offences and no information, warrant, conviction or other proceedings in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(6) No prosecution for an offence under this Act shall be instituted except with the consent of the Ontario Labour Relations Board which may only be granted after affording an opportunity to the person or body seeking the consent and the person or body sought to be prosecuted to be heard.

(7) The Ontario Labour Relations Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Ontario Labour Relations Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

(8) The decision of the majority of the members of the Ontario Labour Relations Board present and constituting a quorum is the decision of the Ontario Labour Relations Board, but, if there is no majority, the decision of the chair or vice-chair governs.

9. The applicant's allegations relate to the processing and resolution of a policy grievance which, she believes, has had a negative impact on her. The issue relates to the job security and placement of the applicant and other teachers for the coming school year. It appears that, as a result of the resolution of the grievance between the responding party and the School Board, the

applicant's full-time placement was altered to a 0.5 position in Art and a 0.5 placement in the Supply Pool.

10. The applicant makes it clear that she is unhappy with both the substance of the resolution and the process employed by her branch affiliate in arriving at that resolution.

11. Essentially, the applicant argues that the Branch Affiliate has repudiated the collective agreement both in the resolution of the grievance and further by entering into a protocol for placement of AFT Teachers for the 1995-96 school year.

12. The Board's approach to requests for consent to prosecute has been consistent over the years. Such requests are relatively infrequent. The granting of such consent is a rare event for reasons which will become clear. The approach of the Board and the exercise of its discretion in these cases has been described as follows in *Fleck Manufacturing Company*, [1978] OLRB Rep. July 615:

2. On an application for consent to prosecute the function of the Board is to determine whether the evidence discloses a *prima facie* case against the respondents, raising arguable points of law appropriate for consideration by the Provincial Court. In performing this function the Board must be convinced not only that there is some evidence to support the prosecution but also that a prosecution would serve the interests of the bargaining relationship between the parties or generally advance the interests of collective bargaining in the Province.

3. The Board will, therefore, first review the evidence to find whether a *prima facie* case has been made out against each respondent and will turn lastly to consider, if such a case is established, whether it would serve the interests of industrial relations to grant consent to prosecute. It should be emphasized that in reviewing the evidence the Board does not make any final findings of fact nor does it make any ultimate determination as against any of the respondents. That is the exclusive function of the Court.

and in *A.A.S. Telecommunications*, [1976] OLRB Rep. Dec. 751 at p. 760:

... the discretion is a screening device which serves two purposes. One purpose of the discretion is to prevent the bringing of vexatious prosecutions. This purpose is reflected in the requirement that an applicant make out a *prima facie* case or raise an arguable point of law. A second purpose, and a more important one, is to insulate the industrial relations process from the criminal process. Hence, the Board, in addition to requiring an applicant to make out a *prima facie* case or raise an arguable point of law, must also be convinced that a prosecution would be consistent with both the promotion of good industrial relations between the parties, and the general conduct of industrial relations in the Province.

13. For the purposes of the instant determination we accept the applicant's allegations and assertions as true and provable. We are not persuaded, however, that, even making that assumption, the applicant has established a case to support the conclusion that there has been a violation of section 58 of Bill 100.

14. The applicant has attempted, quite ingeniously, to construct potential liability by transforming her personal view that the parties' agreement is inconsistent with the collective agreement into the foundation of a quasi-criminal offence. This effort is really a series of legal contortions aimed at achieving indirectly that which the applicant cannot do directly - that is challenge the branch affiliate's conduct before this Board on a standard similar to that set out in section 69 of the Act.

15. In any event, and as the cases make clear, the Board will not grant consent to prosecute where there is no arguable case to establish a breach of the relevant Act. We are not persuaded that such an arguable case has been made out here.



16. Section 58, not unlike section 51 of the Act, makes (collective) agreements binding on the players most affected by them. Bill 100, however, again and not unlike the Act, sets out the primary mechanism for resolving disputes regarding the application, interpretation, administration or alleged violation of a (collective) agreement. One does not expect that every alleged violation of an agreement will result in a prosecution. On the contrary, the general expectation is that such disputes will be resolved through the grievance and arbitration procedures.

17. Furthermore, it is the responsibility of the collective bargaining parties to resolve such disputes. It is therefore open to serious question whether an individual employee or teacher would have standing to complain of a violation of either section 51 of the Act or section 58 of Bill 100. Indeed, there is some authority from this Board suggesting that an individual employee has no such standing in relation to the Act (see *The Corporation of the Township of St. Joseph*, [1988] OLRB Rep. Feb. 204). We see no reason why the logic which applies to section 51 of the Act should not apply equally to section 58 of Bill 100.

18. Even assuming such an individual has that standing, we are not persuaded that the applicant makes out an arguable case that section 58 has been violated. She is clearly unhappy with the settlement of the grievance *and* the entering into of the protocol. In her view, both of these results are inconsistent with the collective agreement. We cannot, however, ignore the fact that regardless of the applicant's views, both the settlement and the protocol represent an agreement of the collective bargaining parties. And, however one characterizes that agreement (as an agreement regarding the interpretation of the agreement or an explicit amendment to it), one cannot escape the implausibility of an argument which characterizes the agreement of the collective bargaining parties as a breach of section 58.

19. Furthermore, the applicant's allegations, even characterized most generously from her perspective, do not amount to the kind of "total repudiation" of the agreement that the Board has required before allowing a party (having standing to bring such a complaint) to proceed with an allegation that section 51 has been violated (see, for example *Maple Leaf Taxi Company Ltd.*, [1982] OLRB Rep. Nov. 1671). The Board's approach here stems from the recognition that the primary mechanism for resolving contractual disputes is arbitration. Only the most extreme and egregious cases would be dealt with as alleged violations of section 51 of the Act. Again, we see no reason why the logic should not apply equally to section 58 of the Act.

20. There is little doubt that the applicant would be better positioned to challenge the conduct of the branch affiliate were it subject to a statutory duty of fair representation. Regardless of the presence or absence of such a statutory obligation, we are not persuaded that the applicant, even accepting all her allegations as true, has established an arguable case alleging a violation of section 58 of Bill 100. Accordingly, on that basis alone, we are persuaded that the applicant's request for consent to prosecute ought to be and is hereby dismissed.

21. In the circumstances, it is perhaps unnecessary for us to go on to consider the second branch of the test normally applied in requests for consent to prosecute. Without going into the matter in great detail, we see nothing in the application to support the conclusion that a prosecution would be consistent with both the promotion of good industrial relations between the parties, and the general conduct of industrial relations between the parties. On the contrary, were every Bill 100 teacher effectively able, despite any specific statutory right to do so, to challenge the conduct of their branch affiliate (even if only related to cases of disputed interpretations of a Bill 100 agreement) by invoking a quasi-criminal process, the impact on the general conduct of Bill 100 industrial relations in the Province could be quite dramatic and unwelcome. In a context where there is no statutory duty of fair representation and where consent to prosecute is not automati-

cally granted in respect of every arguable breach but rather is generally reserved for the most exceptional and egregious kinds of cases, we see no reason why consent to prosecute should be granted in this case even if the applicant had established an arguable case of a violation of Bill 100 (which she has not). Accordingly, the application for consent to prosecute is dismissed on this basis as well.

22. Before concluding, we note that we have considered neither the applicant's allegations that the branch affiliate has violated its own constitution nor her assertion that it is O.S.S.T.F. policy that Bill 100 should include the duty of fair representation. Violation of a branch affiliate constitution is not grounds for prosecution. Similarly, despite any possible agreement between the applicant and O.S.S.T.F. on what should be included in Bill 100, we, of course, can only deal with the legislation as it exists. So long as the Legislature continues to exclude an explicit duty of fair representation from Bill 100, the applicant (or the parties) cannot confer the legislative jurisdiction on the Board to impose such a duty.

23. The application for consent to prosecute is hereby dismissed.

24. The instant dismissal relates to the applicant's statutory rights. While both applications have been dismissed, we cannot fail to observe that these dismissals relate to the very specific statutory rights asserted by the applicant. These dismissals are, of course, without prejudice to whatever other rights the applicant may have at common law.

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**0561-92-G; 2116-92-JD** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721, Applicant v. **Allied Architectural Systems Ltd.**, Responding Party v. Labourers' International Union of North America, Ontario Provincial District Council, Intervenor; Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 506, Applicants v. International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 and Allied Architectural Systems Ltd. and Juan Garcia and Sons Welding Ltd., Responding Parties

**Construction Industry - Jurisdictional Dispute - Labourers' union and Ironworkers' union disputing assignment of certain work, but not agreeing on its description - Board ruling that whether or not work described as involving "metal curtain wall" (as claimed by Ironworkers), disputed work more like metal curtain wall than precast concrete system (as claimed by Labourers) and that disputed work should have been assigned to Ironworkers**

**BEFORE:** *Inge M. Stamp*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Kurchak*.

**APPEARANCES:** *Gary Caroline*, *James Power*, *Kevin Santalucia*, and *S. Arsenault* on behalf of Iron Workers Local 721; *L. A. Richmond*, *A. Camara* and *Larry D'Andrea* on behalf of Labourers, Local 506; *S. Bernofsky* and *G. Harding* on behalf of Allied Architectural Systems Ltd.; no one for Juan Garcia and Sons Welding Ltd.

**DECISION OF THE BOARD;** October 17, 1995



1. A consultation was held in this jurisdictional dispute pursuant to section 93 of the *Labour Relations Act*. The section 126 grievance had been adjourned pending the outcome of the jurisdictional dispute.

2. The work in dispute is described by the Labourers as:

the handling, placement and installation of steel truss (tubular steel pieces) panels which incorporate window frames and adjacent sheet metal panels to which porcelain is later affixed.

3. The Ironworkers describe the work in dispute as:

the rigging, moving, handling, erection and installation of preglazed metal curtain wall at the Hewlett Packard Building, 5150 Spectrum Way, Mississauga, Ontario.

4. Allied Architectural Systems Ltd. ("Allied") obtained the contract for this work and in turn subcontracted it to Juan Garcia and Sons Welding Ltd. ("Garcia"). Allied is bound to both the Ironworkers and the Labourers collective agreements. Garcia is bound only to the Labourers collective agreement. Garcia performed the work in dispute with members of Labourers Local 506. Ironworkers Local 721 filed a grievance against Allied alleging a breach of its collective agreement.

5. The Ironworkers submit Allied under the terms of the Ironworkers' ICI agreement is required to assign the work in dispute to members of Local 721 or subcontract the work to a subcontractor bound to the Ironworkers' agreement. Article 1(5)(e) of the Ironworkers' ICI agreement provides that:

"(e) The erection and/or installation of windows and doors, all metal curtain wall, including pre-glazed systems, cladding, all sheet metal, granite, glass, plastic, fiberglass and all substitute material systems fastened to structural or architectural members or sections."

is the work jurisdiction of the Ironworkers.

6. The Labourers refer to their collective agreement with the Ontario Precast Concrete Manufacturers Association which states:

"... all phases of ERECTION and FINISHING OF PRECAST CONCRETE products and other components including but not limited to outsulation, thermocast, precast or prefabricated panels composed of any type of material, and other similar products, in the building and construction industry ..."

in support of their position that the work in dispute was properly assigned to its members.

7. The parties were not agreed on the description of the work in dispute. If the system being installed is what is described in the industry as "curtain wall" then the Labourers do not claim the work. However, the Labourers take the position the work in dispute is not curtain wall and that the term "curtain wall" has no accepted universal meaning in the trade and may include various types of outer skin systems.

8. The Labourers argue that the work was properly subcontracted to Garcia and performed by members of Local 506. The Labourers submit they have the necessary skills to perform this work and economy and efficiency would dictate this work be assigned to Labourers. The Labourers submit this work is similar to the installation of precast systems. Garcia is an experienced and skilled installer of precast outsulation and similar pre-built, prefabricated outer envelope systems including steel trusses. It is not disputed that the Labourers union has jurisdiction over the installation of precast systems.



9. The Ironworkers submit there is a threshold issue to be determined as to whether the work in question is “curtain wall”. If the work is the installation of “curtain wall” the Labourers do not claim “curtain wall” installation. It is the Ironworkers’ position the work in dispute is the installation of “metal curtain wall” based on five factors:

1. material used
2. intended performance of the system
3. manufacturing method
4. installation practices
5. final appearance.

10. There are a number of different systems used in the industry to enclose buildings. EIFS (Exterior Insulation Finish Systems) also known as Outsulation or Dryvit are systems which consist of a metal stud system sheathed with drywall, foam insulation and an exterior stucco finish. There are precast concrete wall systems consisting of reinforced concrete panels which may or may not have insulation and glazing attached. The metal curtain wall is usually composed of preassembled panels of metal frames onto which sheet metal, insulation and glazing is mounted.

11. Allied is bound to both the Labourers’ and the Ironworkers’ collective agreements. Allied is the respondent in the section 126 grievance filed by the Ironworkers in which the Labourers intervened. The fact that Garcia is only signatory to the Labourers’ collective agreement is not relevant to whether or not Allied assigned the work correctly by subcontracting it to Garcia. Both collective agreements claim jurisdiction over a variety of systems used to enclose buildings. The Ironworkers’ collective agreement refers to “the erection and/or installation of windows and doors, all metal curtain wall, including preglazed systems, cladding, all sheet metal, granite, glass, plastic, fiberglass and all substitute material systems fastened to structural or architectural members or sections.” The Labourers’ agreement refers to “... all phases of erection and finishing of precast concrete products and other components including but not limited to outsulation, thermocast, precast or prefabricated panels composed of any type of material and other similar products, in the building and construction industry ...” By subcontracting the work in dispute to a contractor bound only to the Labourers’ collective agreement Allied in effect assigned the work to the Labourers.

12. There is no dispute that the Labourers perform installation of all precast systems and that the Ironworkers install systems described as “curtain wall”. The Labourers assert the system installed at Hewlett Packard by Garcia is a steel truss system similar to the precast systems both of which are prefabricated outer envelope systems installed by Labourers. The Ironworkers assert the work at Hewlett Packard is a metal curtain wall system and in the alternative it is more analogous to a curtain wall system than to precast or outsulation and should be installed by Ironworkers. There is not a great deal of past practice of the specific type of system that gave rise to this dispute. The required skills to install the work in dispute is a neutral factor. Both trades have performed work which can be described as installing pre-built systems to enclose buildings.

13. Whether or not the work is described as “metal curtain wall” it is work that is more like metal curtain wall than the precast concrete system. Having regard to the materials filed and the representations of the parties, the Board finds that:

the work in dispute performed at the Hewlett Packard Building in Mississauga should have been assigned to the Ironworkers.

14. The Board directs a Labour Relations Officer to contact the parties with respect to the outstanding section 126 grievances which gave rise to the jurisdictional dispute. This includes Board File No. 0561-92-G referred to above and Board File No. 1996-93-G which is adjourned *sine die*.

**OPINION OF BOARD MEMBER F. B. REAUME;** October 17, 1995

1. This is yet another example where the lines of *exclusive* work jurisdiction are further becoming muddled or overlapping due to changing technology and new product application. It is not surprising that this serves to foster claims for damages for work performed by other workers, and the contractor and/or the client may end up paying up to twice the amount for the cost of labour.

2. While I concur with the panel decision that the work is *more like* metal curtain wall than the precast system, it is not unreasonable that the work was sub-contracted and performed by Labourers in this instance.

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**0437-94-R** International Brotherhood of Painters and Allied Trades, Applicant v. Bradscot Construction Limited, Bradscot Limited, Bradscot Management Limited, Bradscot Northern Limited, Bradscot Western Limited and Bradscot (MCL) Ltd.; R.D. Painting; and Alberto Henriques Painting & Decorating, Responding Parties

**Certification - Construction Industry - Reconsideration - Employer applying for reconsideration and requesting "supplementary reasons" that would "fully canvass" the evidence - Application dismissed - Board not accepting that decision failed to indicate the evidence used to support the Board's findings - Request for further reasons dismissed**

**BEFORE:** Jerry Kovacs, Vice-Chair, and Board Members J. A. Ronson and R. R. Montague.

**DECISION OF THE BOARD;** October 18, 1995

1. By request dated August 28, 1995, the Bradscot companies ("Bradscot") ask the Board to reconsider a decision dated August 22, 1995 in which the Board issued certificates to the applicant.

2. The August 22, 1995 decision was the last of several decisions in this matter, which occupied numerous hearing dates and involved the Board's determination of a variety of issues. Aside from oral rulings, the Board issued the following written decisions:

- (i) on July 28, 1994, the Board upheld the applicant's request to list additional Bradscot companies as responding parties;
- (ii) on August 16, 1994, the Board upheld Bradscot's request to add R.D. Painting as a responding party;
- (iii) on January 18, 1995, the Board held that, because the certification

application had been reprocessed upon the addition of further responding parties, the Bradscot companies could add names to the list of employees;

- (iv) on January 27, 1995, the Board dismissed the applicant's request for reconsideration of the decision that permitted Bradscot to add names to the list of employees;
- (v) on February 27, 1995, the Board determined that four persons should be removed from the list of employees;
- (vi) on July 28, 1995, the Board determined that R.D. Painting was not a dependent contractor, and that certificates should issue to the applicant after resolution of a dispute regarding description of the bargaining unit;
- (vii) on August 22, 1995, the Board noted the parties' resolution of the bargaining unit description and ordered the issuance of certificates to the applicant.

3. In its request for reconsideration, Bradscot asks the Board to revoke the certificates issued on August 22nd. It suggests that the Board should have responded first to a request made on August 18th. In its August 18, 1995 correspondence, Bradscot argues that the Board failed to indicate the evidence used to support its findings in the February 27, 1995 decision, and Bradscot requests "supplementary reasons" that would "fully canvass" the evidence. In Bradscot's further submission, the February decision "does not constitute sufficient reasons for any purpose". Indeed, Bradscot alleges an "absence of reasons" in the decision. Bradscot believes that the decision was simply a "bottom-line decision", and that further reasons were to follow.

4. The Board will not reconsider a decision unless a party intends to introduce new relevant evidence which could not have been previously obtained by the use of reasonable diligence, and which, if adduced, would be practically conclusive of the case. Alternatively, the Board may reconsider its previous decision if a party intends to raise objections or make representations which were not already considered by the Board and which the party had no prior opportunity to raise. The rationale for these well-established limits on exercise of the discretion to reconsider earlier decisions is obvious: only if Board decisions are considered to be final can they be relied upon as establishing rights as between parties. This is especially important for the ongoing relationships of parties in labour relations. (See, for example, *Bannerman Enterprises Inc.*, Board File No. 0262-94-R, unreported decision dated April 18, 1995.)

5. Those criteria are not met in this case. Bradscot does not seek to introduce any new evidence. Nor does it suggest that it would make further representations that it had no prior opportunity to raise. Instead, it argues that no certificates should have issued until the Board offered what in Bradscot's view would constitute better or sufficient reasons for an earlier decision. For Bradscot, the point appears to be that reasons for decision should assist parties in deciding whether to exercise their right to seek judicial review. While Bradscot is certainly entitled to assess the sufficiency of reasons in considering its further legal options, we see no reason for the Board to delay issuance of certificates pending a party's assessment of the quality of a prior decision.

6. Similarly, a request for further reasons is not sufficient ground for reconsideration of a decision to issue final certificates. Indeed, such an approach would undermine the Board's occasional resort to the use of "bottom-line" decisions. In effect, what Bradscot seeks is a stay of the



certification decision pending issuance of reasons. Even if Bradscot's case involved a "bottom-line" decision in respect of which the Board had indicated that further reasons would follow, the Board would not find reason to revoke or stay the certification decision pending issuance of reasons. In issuing a bottom-line decision, the Board balances the importance of reasons with the need for expedition. (See the discussion in *Royalguard Vinyl Co.*, [1994] OLRB Rep. June 775, where the Board refused to stay a "bottom-line" certification decision pending issuance of reasons.)

7. For these reasons, the application for reconsideration is dismissed.

8. We turn to Bradscot's request for further reasons for the February decision. Bradscot's allegation of the inadequacy of the February decision focuses on the purported failure to "indicate the evidence used to support the Board's findings." With respect, we do not accept that contention.

9. In challenging the employee list in a certification application, the onus of proof lies with the party which seeks to exclude the person whose status is in issue, except where it would have to prove a negative in order to succeed, in which case the onus lies with the other party. Accordingly, the trade union bears the onus where it contends that a person is a manager. Where the trade union contends that a person was not an employee performing bargaining unit work on the certification application date, the employer bears the onus of proof. (See *Camaro Enterprises limited*, [1992] OLRB Rep. April 423.) In the instant matter, the trade union contended that four of the listed employees were not performing bargaining unit work (i.e., painting) on the certification application date. In particular, the Board had to determine whether Mr. O'Reilly, Mr. Nofle and Mr. Hoernke spent a majority of their time painting on May 5, 1994.

10. The Board found that, on the evidence, the employer did not prove that it was more probable than not that those persons spent the majority of their time painting on May 5, 1994. With respect to Mr. O'Reilly, the Board considered pages from Mr. O'Reilly's diary, relating to May 5 and surrounding days and Mr. O'Reilly's testimony regarding his diary entries; this included consideration of the discovery of two separate entries for a three-day stretch in that critical time-period, and the lack of similar "double-entries" for any other dates in this full-year diary. As noted, the evidence led us to conclude that the entries for the critical period were not made contemporaneously with the events in question. With respect to Mr. O'Reilly's memory of his activities on May 5, we noted that he testified that he was able to recall precisely his activities of that day but that he was unable to recall duties performed on other specific dates. Based on that evidence, we did not accept Bradscot's assertion that Mr. O'Reilly's recollection was proof that he was painting for the majority of the work day on May 5.

11. With respect to Mr. Nofle and Mr. Hoernke, we noted that there was evidence of their duties performed on other dates, and of evidence of *where* they performed *unspecified* duties, but there was no cogent evidence that they spent the majority of their time painting on May 5.

12. In our view, the Board has provided the evidentiary basis upon which it reached its conclusions. It is understandable that Bradscot notes the distinction between the intensive review of facts in the July 28, 1995 decision as opposed to the summary referral to facts (or lack thereof) in the February decision. However, the Board's approach to the canvassing of evidence varies from decision to decision depending on many factors, including the nature of the issue to be determined. As with every administrative tribunal, the Board finds that a lengthy recital of evidence is often unnecessary and, indeed, in conflict with the tribunal's role in providing expeditious adjudication.

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**2865-92-U William Hill Jr., Applicant v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938, Responding Party**

**Discharge - Duty of Fair Representation - Remedies - Unfair Labour Practice - Board earlier finding that union breached duty of fair representation and remaining seized with respect to remedy - Board directing that applicant's discharge grievance be referred to arbitration and that applicable time limits be waived - Board applying *Bellai Brothers* case in determining that Board without jurisdiction to award costs, as requested by applicant**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *William Hill Sr., William Hill Jr.* and *C. J. Abbass* for the applicant; *N. L. Jesin* and *R. Bortolotti* for the responding party.

**DECISION OF THE BOARD;** October 11, 1995

**I**

1. By decision dated January 25, 1995 [now reported at [1995] OLRB Rep. Jan. 21], the Board allowed this section 91 application alleging a breach of section 69 of the *Labour Relations Act*. The Board remained seized with respect to the issue of remedy as follows:

46. This brings me to the question of remedy. In his application, the applicant requested that "91-Sub 4 - Sub C" [sic]. Section 91(4)(c) provides that:

**91.- (4)** Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting, the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

• • •

- c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally; or

I take it from the applicant's reference to this provision that he was requesting that the Board either reinstate him to his employment with Cott or award damages. Since the applicant did not name Cott as a responding or interested party, it appears that he was interested in damages rather than a reinstatement. Further, although Local 938 identified Cott as an interested party and the Board gave Cott notice of these proceedings as a result, the company filed nothing and did not participate in the proceeding.

47. At the hearing, the applicant, through counsel, indicated for the first time that he was seeking the relief which is usually sought in section 69 proceedings, and commonly granted when the Board finds that a trade union has breached section 69; namely, that Local 938 be directed to take the grievance to arbitration.

48. In this case, it is not at all clear that the Board can or should direct that the grievance go to arbitration. Such an order would affect Cott, which was not named as a party, does not appear to have been given sufficient notice that it might be affected by the proceeding, and which did not participate in the proceeding. If such a remedy can and should be granted, it is not clear what directions, if any, should be given regarding a responsibility for its carriage, the associated costs, or how any potential liability should be apportioned in the circumstances, including the applicant's delay in proceeding with the matter.

49. Accordingly, I do not find it appropriate to award the applicant any relief at this time. Instead I would remit the question of remedy to the parties and Cott to resolve if they can. I will remain seized with respect to the issue of remedy for a period of six months.

50. The Registrar is directed to send a copy of this decision to Cott as well as to the parties. The Registrar is also directed to schedule a hearing to deal with the issue of remedy upon the written request of any of the applicant, Local 938 or Cott. If no party requests a hearing within six months from the date hereof, the Board will consider the issue of remedy to have been resolved and this proceeding will be finally terminated.

2. The parties were unable to resolve the issue of remedy and the applicant asked the Board to deal with it. The Board convened a hearing for that purpose on September 11, 1995.

3. At the hearing, the applicant and the responding trade union advised the Board that they had agreed that the matter should be referred to arbitration. They requested the usual Board order, including an order requiring the employer Cott Beverages Inc. ("Cott") to waive any applicable time limits, in that respect. The applicant and the trade union also agreed that Mr. Jesin's firm would have carriage of the applicant's grievance at arbitration. Although Cott was given notice of the September 11, 1995 hearing, no one attended at it on behalf of the company.

4. As I indicated in the Board's January 25, 1995 decision, I was concerned about whether the Board can or should direct that the applicant's grievance go to arbitration. Having further considered the matter, however, I am now satisfied that the order can and should go as requested and agreed to by the applicant and trade union.

## II

5. There has been a "duty of fair representation in the *Labour Relations Act* since 1971. Initially, the Board took a rather traditional litigation approach in such cases. That is, the Board treated them as disputes between the employee and trade union involved which did not concern the employer. First the Board assessed the trade union's conduct. Then, if the Board determined that the trade union had breached what is now section 69 of the Act, the Board awarded damages, based on the Board's own assessment of the employee's grievance (*Rutherford's Dairy Limited*, [1972] OLRB Rep. Mar. 240, *Alfred Compton*, [1972] OLRB Rep. Oct. 916).

6. Until 1973, an employer was not considered to be a proper party to a duty of fair representation case. But with its decision in *Ford Motor Co. of Canada Ltd.*, [1973] OLRB Rep. Oct. 519 (sometimes referred to as the *Gebbie and Longmoore* case) the Board began to take a more labour relations oriented approach to fair representation cases, and determined that an employer could be made a party, primarily for remedial purposes (see also, *Imperial Tobacco Products*, [1974] OLRB Rep. July 418). As the Board continued to develop its labour relations approach to fair representation cases, it began to consider whether one appropriate remedy might be to send the grievance at the center of such a case to arbitration, and thereby put the parties in the position they would often have been in but for the trade union's breach of the Act.

7. It appears that the Board first directed that a grievance be referred to arbitration as a primary remedy in a duty of fair representation proceeding in *Leonard Murphy*, [1977] OLRB



Rep. Mar. 146. Then, beginning with *Massey-Ferguson Industries Limited*, [1977] OLRB Rep. Apr. 216, the Board departed from the approach which required it to assess grievances in fair representation cases in the same way that a board of arbitration might, and suggested that the appropriate remedy in fair representation cases is generally to send the matter to arbitration:

20. Not only did the *Bachiu* dictum result in protracted section [69] proceedings, it was also regarded in some quarters, and we think with some justification, as unfair to the employer who is, after all, only a party to a section [69] complaint because its rights might be affected thereby. Lest there be any misunderstanding on this point, we want to make it clear that the Board holds to the position that an employer should not be permitted to shelter behind a trade union's breach of its duty of fair representation, and thereby escape from its contractual obligation made mandatory by section 37 of *The Labour Relations Act* to answer in arbitration for "its alleged violations of the collective agreement". Accordingly, the Board will continue to use its powers under section 79 of the Act, which include the power to override the specific provisions of a collective agreement, to ensure that an aggrieved complainant is not in that way deprived of the opportunity to obtain full and effective redress for a trade union's wrongful failure to carry his grievance to arbitration (for the Board's initial exercise of this remedial authority, see *Leonard Murphy* and *International Printing and Graphic Communications Union, Local 482*, Board File No. 1687-76-U discussed infra). But that notwithstanding, we do not think it entirely fair to require an employer to defend itself against an alleged contract violation before a contravention of section [69] has been established.

21. With this analysis of the problems inherent in the procedural format suggested in *Bachiu*, we can now outline the procedure which the Board intends to adopt when dealing with section [69] complaints.

22. Where the Board determines that a trade union has violated its statutory duty of fair representation by failing to take an employee's grievance to arbitration, and where it further determines that arbitration is the appropriate remedy in the circumstances, (which it will not always be, see paragraph 28), the Board will exercise its remedial authority under section 79 of the Act to make an order directing the union to arbitrate the grievance with whatever modifications of the collective agreement appear necessary to ensure that a fair and expeditious arbitration on the merits of the grievance takes place. If the union's denial of fair representation has aggravated the complainant's financial loss, the Board will also, at that time, make an order for damages, apportioning liability as between the trade union and the employer in the event that the grievance succeeds at arbitration, together with whatever further orders that contingent order for damages may necessitate.

23. This procedure has already been used in another recent section [69] case. In *Leonard Murphy* (supra), the Board found that the arbitrary and bad faith conduct of the union had denied the complainants a chance to have their discharge grievances arbitrated. To rectify the loss occasioned by the union's breach of its duty of fair representation, the Board directed the union to arbitrate the grievances forthwith, notwithstanding certain potential collective agreement obstacles. Further, the union was required to compensate the complainants for their damages directly attributable to the union's unfair representation. Because of the inherent conflict of interest resulting from the Board's contingent order for damages, the union was also ordered to engage counsel, jointly chosen by the complainants and the union, to present the complainants' grievances at arbitration.

24. The implication of the procedure which the Board utilized in *Murphy*, and which the Board is now adopting, is that a party to an unfair representation proceeding (be in complainant, trade union or employer), need no longer feel compelled to present to the Board all its evidence on the merits of the complainant's grievance against the employer. The reason is that it will have a full opportunity to introduce that evidence before an arbitration board if the union is found to have committed a breach of its statutory duty and arbitration is indicated. We realize, of course, that many section [69] complainants appear before the Board without benefit of legal representation and that they will be no more familiar with this new procedural format than they were with the old. So as not to deny a complainant a full and fair opportunity to make its case, the Board has not been in the past, and will not be in the future, unduly restrictive with respect to the evidence which it allows to be introduced in a section [69] proceeding. The adoption of the

new procedure, however, will mean that neither the union nor the employer will be required to respond to evidence which is of no relevance to the issue of whether the union is in breach of its duty of fair representation.

25. To summarize, the procedure which we have adopted for the adjudication of section [69] complaints is designed to avoid the twin pitfalls inherent in the procedure suggested in *Bachiu* - unduly protracted hearings and need for the employer to come forward with evidence to defend its actions in respect of the alleged contract violation before a violation of section [69] has been made out.

26. It should be emphasized that the procedure outlined in this decision does not mean that the parties to an unfair representation proceeding will now have no need of adducing evidence of the merits of the grievance underlying the complaint. The parties (particularly the complainant and the union) will still have an interest in conveying to the Board, through their evidence, a sense of how the complainant's grievance against the employer was likely to have been perceived by the trade union. There is in many section [69] cases, however, a great deal of evidence which, while very pertinent to the question of whether the complainant's grievance would be successful at arbitration, is not relevant to the issue of whether the union has dealt with that grievance in a proper manner.

27. Before concluding, we would add these further comments about the significance of the procedure which we have adopted within the framework of the Board's developing section [69] jurisprudence. Before *Gebbie*, the remedy of referring the grievance of a successful complainant to arbitration was not regarded as available, the Board taking the view that an employer was not a proper party to a fair representation complaint, since section [69] imposed no duty upon it. In order to assess the complainant's damages, the Board, therefore, was required to make a judgment about whether the complainant would have secured a favourable arbitration award. *Imperial Tobacco* then held that an employer, although under no statutory duty to the complainant, could be joined as a party for remedial purposes; and, from that point on, it was no longer necessary for the Board to speculate on the outcome of arbitration. Nevertheless, the option of final adjudication by the Board was preserved: first, because there was a concern that a trade union which had violated its duty of fair representation by failing to take an employee's grievance to arbitration might not do a sincere job of presenting that employee's case at an arbitration hearing; second, because the Board was concerned about referring unmeritorious grievances to arbitration with the expense, delay and duplication of evidence which that would entail; and, finally, because the remedy of the Board finally disposing of an established section [69] violation had always existed in theory, if not in practice, and the Board saw no immediate need to abandon that remedy simply because it was no longer restricted to an award of damages against the offending trade union.

28. With hindsight, the Board can now see that the uncertainty which was created by the preservation of that remedial option, with its unforeseen procedural ramifications, was neither necessary nor desirable. Should there be a concern now that a successful complainant will not be represented fairly by his union at arbitration, that concern can be met by the Board making an order directing the union to retain counsel acceptable to the complainant, as was done in *Murphy*.

29. It is true that the abandonment of the remedy of final adjudication by the Board of the grievances which come before it under section [69] may serve to delay and increase the costs to the parties in cases where a section [69] complaint succeeds. But that sacrifice is something which we believe, on balance, to be unavoidable. It should be emphasized, though, that not every successful section [69] complaint requires the remedy of arbitration. As we stated in *Murphy*, the whole point of a remedy for a violation of section [69] is to, as nearly as possible, put the parties into the position they would have been in had the unfair representation not occurred. Stated another way, the Board does not view section [69] as conferring upon a successful complainant an automatic right to have his grievance arbitrated. If the grievance is not one which his union would have been required to carry further had it not breached its duty of fair representation, the union should not be required to proceed to arbitration if it decides, after proper consideration, that it still does not wish to do so. This last conclusion suggests that the Board need not be concerned about abandoning the type of remedy which was ordered in *Pap*. It will be remembered that the Board there decided against referring the grievance of a success-



ful complainant to arbitration, assuming it had authority to do so, not only because of the cost and time involved, but also because of the lack of merit in the grievance itself. That exercise of the Board's remedial authority, while perhaps supportable within its historical context - at a time when the Board was still uncertain as to its authority to require a union to arbitrate a grievance - would not, in our view, be an appropriate one today, regardless of its procedural implications. Not only would a *Pap*-type remedy be of small consolation to a "successful complainant", it would also be inconsistent with the Board's concept of the purpose of a section [69] remedial order - that of restoring the *status quo ante*. The more appropriate response in a case where a union fails to take a grievance to arbitration, and it is not obvious that arbitration is necessary, is for the Board to direct the union to re-process the grievance from the point at which fair representation was denied. That is the kind of remedial response which the Board would have ordered in *Pedalino* (*supra*) had the views of the Vice-Chairman in that case been in the majority. It is, moreover, a remedial response which affords the parties an opportunity to voluntarily settle the grievance on terms which are not unfair to the complainant.

8. As things have developed since *Massey-Ferguson Industries Limited, supra*, referral of the applicant's grievance to arbitration has become a conventional remedy in duty of fair representation cases. However, although this is now the primary remedy, it is not the only one. The Board will fashion a different remedy in circumstances in which it considers that sending the matter to arbitration is either unnecessary or otherwise inappropriate. For example, the Board has directed consideration of the grievance at an earlier stage in the overall process (*Susan Forbes*, [1993] OLRB Rep. Dec. 1283, *Peter Galiatsos*, [1992] OLRB Rep. June 714), has ordered the employee to be reinstated to his employment (*Tim Turner*, [1993] OLRB Rep. Aug. 811), and has awarded damages (*Gerald Lecuyer*, [1985] OLRB Rep. July 1099 and [1987] OLRB Rep. Jan. 72). In one case, the Board declined to award any remedy which might effect the employer because that employer had not been named as a party and had had no notice of the proceeding (*David A. Spackman*, [1991] OLRB Rep. Aug. 1006). However, the common thread which runs through all of the Board's jurisprudence, including the Board's decisions in what it is considered to be exceptional circumstances, is that referral to arbitration is the primary remedy in duty of fair representation cases.

### III

9. In this case Cott did not have actual notice that the applicant's request for relief included a request that the matter be sent to arbitration until it received the Board's January 25, 1995 decision. However, unlike the situation in *David A. Spackman, supra*, the company did have notice of the proceedings from the outset, and it had notice of the applicant's request that his grievance be sent to arbitration when it received the Board's January 25, 1995 decision. Unlike many employers in such cases, Cott chose not to take part in the proceedings before the Board at any stage, including the hearing convened to deal with the issue of remedy.

10. Section 69 of the *Labour Relations Act* establishes what is commonly referred to as the "duty of fair representation" it requires a trade union to represent employees in a bargaining unit for which it holds bargaining rights in a manner which is not arbitrary, discriminatory or in bad faith. In a case where an employee alleges that his/her trade union has breached section 69, the dispute is between that employee and the trade union, and, strictly speaking, it is not a matter with which the employer is directly concerned. The employer's concern arises, if at all, at the remedial stage because the most common remedy given to successful section 69 applicants in cases which involve a refusal by the trade union to take a grievance to arbitration (the majority of section 69 cases) is to require the trade union to take the employee's grievance to arbitration. The conventional wisdom has been that the employer has an interest in at least this aspect of a section 69 proceeding because it is a party to any arbitration proceeding and is therefore directly affected, particularly if the Board's direction includes an order requiring the employer to waive time limits. By extension, it has been generally accepted that this gives the employer an interest and standing to



participate in the entire section 69 proceeding, including the hearing on the issue of liability. In the result, most employers choose to, and having so chosen are allowed to, participate in the entire section 69 proceedings before the Board.

11. I have already observed that an employer has little or no direct interest in a dispute between an employee and his/her trade union which centers on a refusal by the trade union either to grieve or to take a grievance to arbitration. I am not sure that an employer's interest in questions of remedy is not more apparent than real, although it may nevertheless be the case that the employer is entitled to notice and an opportunity to participate in that respect in any event.

12. The fact is that it would now be unusual for the Board to decline to order a grievance to arbitration to remedy a successful section 69 application. Further, subject to an order dealing with the apportionment of any compensation which may be directed if the grievance succeeds at arbitration, what has the employer lost if the matter is ordered to arbitration? After all, where such a section 69 application succeeds, it is generally, as in this case, because the Board has concluded that the grievance should have been taken to arbitration in the first place. It may be that even in cases where the applicant has filed an application with the Board in a timely manner, an employer could allege that it would be prejudiced at arbitration as a result of the delay and intervening events such that it would be inappropriate for the matter to be sent to arbitration, and that the Board would then have to try to fashion some other remedy if it was persuaded that that was the case. However, the Board would expect an employer which has had notice of a section 69 application to make reasonable efforts to prevent such prejudice from arising.

13. In any event, in this case Cott has not alleged that it would suffer any prejudice, and (other than the obvious one relating to the apportionment of compensation if ordered at arbitration) none is apparent on the materials before the Board. Further, the Act contemplates that grievances which can not be resolved between the parties will be arbitrated, which is why ordering the grievance to arbitration is the most common remedy granted to an employee in the applicant's position. Further, for the Board to attempt to fashion some other remedy in this case would in effect require the Board to arbitrate the grievance itself, something which it is not the Board's function to do in such cases.

14. In this case, I am not particularly troubled by the fact that Cott was not named as an actual party to the proceeding. It was identified as an interested party and has had notice of the proceedings throughout. It is not uncommon for labour relations tribunals to make orders which affect persons or other entities which have not been parties to proceedings before them. In arbitration proceedings, for example, there are grievances which have an effect on other employees such that the law requires that they be given notice of the proceedings and an opportunity to participate in them. The fact that they may choose not to do so and are not formally added as parties does not preclude boards of arbitration from making awards which affect them. In the case of this Board, many proceedings result in decisions which affect persons which have been given notice but not been formally named as parties. Certification, termination of bargaining rights, and section 1(4) or 64 applications are examples of such proceedings. Accordingly, and having regard to the provisions in section 91 (4) of the Act which gives the Board a plenary remedial jurisdiction in applications made under section 91 of the Act, I am satisfied that I have the jurisdiction to order the applicant's discharge grievance to arbitration as jointly requested by the applicant and responding trade union.

15. Further, in the circumstances of this case, having regard to the purpose and provisions of the *Labour Relations Act* and to my conclusions in the January 25, 1995 decision, and in the absence of any cogent reason not to do so, I find it appropriate to order that the discharge griev-

ance of the applicant relating to the events on October 23rd to 26th, 1992 (see paragraphs 19 to 21 of the January 25, 1995 decision), be taken to arbitration. I further order that Cott waive any time limits or objections to timeliness in that respect.

16. Having so ordered, I remain concerned about the delays occasioned by these proceedings and the applicants own conduct in pursuing this application before the Board. Accordingly, I will remain seized with this matter for the purpose of dealing with any issue of apportionment which may arise if this grievance succeeds at arbitration and compensation or damages are ordered by the Board of Arbitration.

#### IV

17. The applicant also sought an order requiring the responding trade union to pay him \$3,000.00 as compensation for his legal expenses in pursuing this application before the Board. This request was opposed by the responding trade union.

18. Mr. Abbass described this as a request that the applicant be “made whole” by putting him in the position he would have been in but for the responding trade union’s breach of the Act.

19. Notwithstanding counsel’s attempt to characterize it differently, the applicant’s request amounts to a request for an order for costs. I am aware that the Board has generally declined to award costs, but that it has done so on some occasions (see, for example, *Canadian Union of Public Employees Local 2327*, [1982] OLRB Rep. Mar. 342, sometimes cited as *Suzanne Hebert - Vaillant*, also a case involving what is now section 69). However, in *Bellai Brothers Ltd.*, [1994] OLRB Rep. Jan. 2, a decision by a three person panel which I chaired, the Board wrote that:

33. Bellai’s request for “costs” potentially raises several questions. First, can the Board award costs at all; that is, does the Board have jurisdiction to award costs? Second, if the Board does have such a jurisdiction, what approach can or should it take; that is, what are the limitations on the Board’s jurisdiction with respect to costs and what are the appropriate policy considerations? Third, if it can, should the Board award costs in this case, either as requested by Bellai or at all? Of course, if the answer to the first question is negative it is not necessary to address the others.

34. The Board’s jurisprudence demonstrates a general reluctance to address either of the first two questions directly. Where the issue of costs has been addressed, the Board’s general approach has been to assume, without deciding, that the Board has an unspecified costs jurisdiction, and, in most cases, the Board has declined to award costs in a particular case for policy reasons. In the result, the Board has developed a practice of not awarding costs. The Board disposition of a request for costs in *Repac Construction & Materials Limited*, [1976] OLRB Rep. Oct. 610 is representative of the Board’s general approach:

10. The request for costs also goes against the grain of this Board’s previous practice. Previous decisions not only indicate that the Board has no general practice of awarding costs, but also raise the question of whether the Board has any procedural jurisdiction to make an order for costs. See *Dow Jones Ltd.*, [1970] OLRB Rep. June 382; *Joffe Lapointe & Sons Ltd.*, [1971] OLRB Rep. Sept. 621. On some occasions, however, the Board has made the payment of costs a condition for the granting of an adjournment. See *Metropolitan Toronto Apartment Builders’ Association et al.*, [1970] OLRB Rep. Nov. 846; *R.T. Construction*, [1971] OLRB Rep. June 342. From these cases, it can be seen that the Board has not attempted to exercise any general power to award costs. This approach might be attributed to the fact that the Board has not been given any express power to award costs. It should be noted, however, that the general procedural jurisdiction, conferred by both section 91(2) of *The Labour Relations Act* and section 23 of *The Statutory Powers Procedure Act*, may be wide enough to encompass the power to award costs. Jurisdictional uncertainty, therefore, is not a particularly compelling explanation of the Board’s reluctance to award costs. In our

opinion, there is a much better reason for adopting a general practice of not awarding costs. The underlying purpose of *The Labour Relations Act*, as set out in its preamble, is to further harmonious relations between employers and employees through the collective bargaining process. The purpose is not well served by a procedure that usually requires the identification of a winner and a loser. The application of such a procedure, moreover, would be time-consuming, distracting the Board from its primary task of facilitating collective bargaining.

The awarding of costs, therefore, should not be extended beyond the situation where a party is being compensated for the expenses that would result from an adjournment to convenience another party. To extend this procedure any further would introduce an unnecessarily punitive element into the Board's procedures. The request for costs are denied.

35. However, there have been exceptions. The Board has awarded what it has called "costs" in several cases. As the Board noted in *Repac Construction, supra*, the Board has made the payment of costs a condition of the granting of a contested adjournment (an approach which seems to have received a kind of judicial approval in *Re Her Majesty the Queen in Right of Ontario and Ontario Public Service Employees Union and The Grievance Settlement Board*, (Taffinder and the Ministry of Correctional Services), April 13, 1984, Ontario Divisional Court unreported, where the Court stated:

In these circumstances, one alternative the Board could have pursued would have been to require that the Crown compensate the grievor for all expenses incurred in connection with the abortive hearing. To refuse the adjournment outright and to proceed, as it did, effectively to deal with the grievance, was to ignore completely the principle of fairness to which the Board's discretion must always be subject.)

The Board has awarded costs in a section 126 proceeding involving a collective agreement which required a delinquent employer to pay legal or other costs of collecting monies owing with respect to bargaining unit employees (*Rocco D'Andrea*, [1987] OLRB Rep. July 986). The Board has also awarded costs to a successful applicant as part of the "make-whole" order (*Academy of Medicine*, [1977] OLRB Rep. Dec. 783; *Suzanne Hebert-Vaillant*, [1981] OLRB Rep. June 262).

36. The Board has awarded costs in so few cases that the cases in which it has done so are the exception rather than the rule. Even when the Board has awarded costs, the Board has stressed the extraordinary nature of such an award, and has either not commented on its jurisdiction to do so, or has done so only in general terms, or has indicated it was doing so under the Board's remedial authority under what is now section 91(4) of the Act. Further, the Board has always stressed that its general practice is not to award costs. When the Board has rejected a request for costs it has usually assumed, for the purpose of its decision, that it has the jurisdiction to do so but has concluded that costs were not appropriate in the particular case, thereby leaving the costs door open, so to speak.

37. It is difficult to distinguish between the cases in which the Board has awarded "costs", in whatever form, and those in which the Board has refused to do so. Further, the Board has expressed some doubts regarding its jurisdiction to award "costs". In *Repac Construction, supra*, the Board referred to a "jurisdictional uncertainty" but denied the request for costs on policy grounds. In *Joe Arban Contractor Ltd.* [1983] OLRB Rep. Apr. 547, the Board's decision reflects some doubt concerning the Board's jurisdiction to award costs outside of its general or remedial jurisdiction or with respect to adjournments. In *Fitzhenry & Whiteside*, [1987] OLRB Rep. Apr. 505, the Board said that:

... Were it in the power of the Board to award costs [to a successful respondent or against an unsuccessful applicant] we would certainly do so. However, we do not think that we can award costs, but we can certainly dismiss both the application and complaint ..."

In *Gerald Lecuyer*, [1987] OLRB Rep. April 529, the Board observed that:



This Board has repeatedly said that *if* it does have the power to award costs to a successful complainant, it would be inappropriate to exercise that power where there is no corresponding power to award costs against an unsuccessful complainant ...

[emphasis added]

38. There is good reason to doubt the Board's jurisdiction to award costs as such. In the legal meaning of the term, costs refers to an award made in favour of a successful litigant, payable by the loser at the conclusion of the proceeding, as an indemnity for allowable expenses incurred with respect to the proceeding. In both judicial and quasi-judicial settings, costs as such are reciprocal and fault-based in the sense that the loser indemnifies the winner, in a general way, for its litigation expenses (see, for example, *Bell Canada v. Consumers Association of Canada et al.*, [1986] Admin L.R. 205 (Supreme Court of Canada), and see, *Re Hamilton-Wentworth and Save the Valley Committee et al.*, (1985) 51 O.R. (2d) 23 (Ontario Divisional Court)). Except where specifically authorized by statute, costs are not assessed as a penalty, or for reasons unconnected with indemnification.

39. Superior Courts in Ontario assert an inherent costs jurisdiction (*Apotex Inc., v. Egis Pharmaceuticals*, (1991) 4 O.R. (3d) 321; *Re Sturmer and Beaverton*, (1912) 2 D.L.R. 501; and see also *Kendall v. Hunt*, (1979) 106 D.L.R. (3d) 277 (British Columbia Court of Appeal) which describes the situation in British Columbia where prior to 1969 British Columbia Courts awarded costs without specific statutory authority on the basis of inherent jurisdiction said to be recognized in various statutes and the British Columbia Rules of Practice). Certainly, the Courts of Chancery (but not the Common-law Courts) had such an inherent jurisdiction (see, generally, Mark M. Orkin, Q.C., *The Law of Costs* second edition ((1993), Canada Law Book Inc., Aurora)). However, the primary jurisdiction of Ontario courts to award costs is rooted in the *Courts of Justice Act* and the Ontario Rules of Civil Procedure. Section 131(1) of the *Courts of Justice Act* provide that:

131.-(1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

Rule 57 of the Ontario Rules of Civil Procedure provides:

#### Factors of Discretion

**57.01(1)** In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle made in writing,

- (a) the amount claimed and the amount recovered in the proceeding;
- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was;
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;

- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
  - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different solicitor; and
- (i) any other matter relevant to the question of costs.

#### Costs Against Successful Party

(2) The fact that a party is successful in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case.

#### Costs may be Fixed or Assessed

(3) In awarding costs, the court may fix all or part of the costs with or without reference to the Tariffs, instead of referring them for assessment, and where the costs are not fixed, they may be assessed under Rule 58.

#### Authority of Court

(4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under section 131 of the *Courts of Justice Act*,

- (a) to award or refuse costs in respect of a particular issue or part of a proceeding;
- (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding; or
- (c) to award all or part of the costs on a solicitor and client basis.

40. As the Board has itself observed, the *Labour Relations Act* gives no express authority to award costs, either to the Board or to boards' of arbitration constituted under the Act. Nor does any other legislation. There is nothing in any of the extensive amendments which came into effect on January 1, 1993, following a lengthy and comprehensive review of the Act, which changed this. In contrast, the Legislature has expressly given other administrative tribunals and arbitrators under the *Arbitrations Act* the authority to award costs. For example:

(a) subsections 7(4)-(7) of the *Consolidated Hearings Act* give a joint board the authority to award costs as follows:

- (4) A joint board may award the costs of a proceeding before the joint board.
- (5) A joint board that awards costs may order by whom and to whom the costs are to be paid.
- (6) A joint board that awards costs may fix the amount of the costs or direct that the amount be assessed, the scale according to which they are to be assessed and by whom they are to be assessed.
- (7) In awarding costs, in respect of hearings in relation to which public notice was first given after the 1st day of April, 1989, a joint

board is not limited to the considerations that govern awards of costs in any court.

This is in addition to subsection 7(3) which provides:

- (3) Subject to this Act and the regulations, a joint board may determine its own practice and procedure.

(b) sections 14 and 28 of the *Ontario Energy Board Act* provide that:

**14.** The Board for the due exercise of its jurisdiction and powers and otherwise for carrying into effect this or any other Act has all such powers, rights and privileges as are vested in the Ontario Court (General Division) with respect to the amendment of proceedings, addition or substitution of parties, attendance and examination of witnesses, production and inspection of documents, entry on and inspection of property, enforcement of its orders and all other matters necessary or proper therefor.

...

**28.-(1)** The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed.

(3) The Board may prescribe a scale under which such costs shall be taxed.

(4) In this section, the costs may include the costs of the Board, regard being had to the time and expenses of the Board.

(5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court.

(c) section 97 of the *Ontario Municipal Board Act* provides that:

**97.-(1)** The costs of and incidental to any proceeding before the Board, except as herein otherwise provided, shall be in the discretion of the Board, and may be fixed in any case at a sum certain or may be assessed.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be assessed and allowed.

(d) section 24 of the *Ontario Highway Transport Board Act* provides that:

**24.-(1)** The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed.

(e) section 41 of the *Human Rights Code* provides, with respect to Boards of Inquiry, that:

**41.-(1)** Where the board of inquiry, after a hearing, finds that a right of the complainant under Part 1 has been infringed and that the infringement is a contravention of section 9 by a party to the proceeding, the board may, by order,

- (a) direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices; and
- (b) direct the party to make restitution, including monetary compensation, for



loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish.

(2) Where a board makes a finding under subsection (1) that a right is infringed on the ground of harassment under subsection 2(2) or subsection 5(2) or conduct under section 7, and the board finds that a person who is a party to the proceeding,

- (a) knew or was in possession of knowledge from which the person ought to have known of the infringement; and
- (b) had the authority by reasonably available means to penalize or prevent the conduct and failed to use it,

the board shall remain seized of the matter and upon complaint of a continuation or repetition of the infringement of the right the Commission may investigate the complaint and, subject to subsection 36(2), request the board to re-convene and if the board finds that a person who is a party to the proceeding,

- (c) knew or was in possession of knowledge from which the person ought to have know of the repetition of infringement; and
- (d) had the authority by reasonably available means to penalize or prevent the continuation or repetition of the conduct and failed to use it,

the board may make an order requiring the person to take whatever sanctions or steps are reasonably available to prevent any further continuation or repetition of the infringement of the right.

(3) Where a board of inquiry for any reason is unable to exercise its powers under this section or section 39, the Commission may request the Minister to appoint a new board of inquiry in its place.

(4) Where, upon dismissing a complaint, the board of inquiry finds that,

- (a) the complaint was trivial, frivolous, vexatious or made in bad faith; or
- (b) in the particular circumstances undue hardship was caused to the person complained against,

the board of inquiry may order the Commission to pay to the person complained against such costs as are fixed by the board.

(5) The Board of inquiry shall make its finding and decision within thirty days after the conclusion of its hearing.

(f) section 32 of the *Expropriations Act* provides that:

**32.-(1)** Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is 85 per cent, or more, of the amount offered by the statutory authority, the Board shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with this subsection and the tariffs and rules prescribed under clause 44(d).

(2) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is less than 85 per cent of the amount offered by the statutory authority, the Board may make such order, if any, for the payment of costs as it considers appropriate, and may fix the costs in a lump sum or may

order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with the order and the tariffs and rules prescribed under clause 44(d) in like manner to the assessment of costs awarded on a party and party basis.

(g) sections 20, 21, 22, 27 and section 12 of the Schedule (under section 5) of the *Arbitrations Act* provide that:

**20.** Where at a meeting of arbitrators of which due notice has been given no steps are taken in consequence of the absence of a party, or of a postponement at the request of a party, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses and of the counsel or solicitor of the party present and not desiring the postponement, and, unless under the special circumstances of the case they think that it would be unjust so to do, they shall charge the amount thereof, or of the disbursements, against the party in default or at whose request the postponement is made, and the last mentioned party shall pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and the amount so charged may be set off against, and deducted from, any amount awarded in that party's favour.

**21.-(1)** A party to an arbitration is entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, assessed by one of the assessment officers of the court upon an appointment that may be given by the officer for that purpose on the filing of an affidavit setting forth the facts.

(2) An assessment of the fees of the arbitrators may be had upon an appointment given at the instance of the arbitrators or any of them upon a like affidavit.

**22.-(1)** The assessment officer shall in no case, except as provided in section 18, assess higher fees than are prescribed to the arbitrators but, upon reasonable grounds, he or she may reduce the fees to any amount below the maximum prescribed, but not below the minimum, having regard always to the length of the arbitration, the value of the matter in dispute, and the difficulty of the questions to be decided, and the fees to be allowed to solicitors and counsel shall be as nearly as may be similar to the fees allowed upon a reference in the court, the scale to be determined by the assessment officer having regard to the value of the matter in dispute, but he or she shall not assess more than one counsel fee to either party.

(2) The assessment officer may assess a reasonable sum for preparing the award.

(3) An appeal may be had from the assessment in the same manner as from an assessment officer's certificate of assessment of costs in an action.

(4) The assessment officer and the judge upon appeal from assessment have the power to reduce fees payable to the arbitrator and to counsel and solicitors where the arbitration has been unduly prolonged.

**27.** An order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just.

...

12. The costs of the reference and award are in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid.

(see also, section 11(2)(i) of the *Alberta Labour Relations Code* which enables the Alberta Board to award costs against the party initiating a proceeding or the party responding where the Board considers the proceeding or response "trivial, frivolous or vexatious".)

41. The Ontario Labour Relations Board has been created by the *Labour Relations Act*. As a creature of statute, the Board has no inherent jurisdiction; it has only the powers conferred upon it by statute. (Though this seems to be a rather trite proposition, useful reference can be

made, specifically with respect to the issue of costs, to *Regional Municipality of Hamilton-Wentworth v. Hamilton-Wentworth Save the Valley Committee et al.* (1985) 15 Admin L.R. 86 (Ontario Divisional Court), where, at pages 96 and 97, the court held that:

This Board [a joint board constituted under the *Consolidated Hearings Act*] being creature of statute can only exercise the powers conferred upon by the enabling of legislation.

And on the issue of costs, the court in that case went on to add that:

... from the earliest of times it has been recognized that the power to award costs must be found in a statute.)

(See also *Ontario Energy Board*, [1985] 51 O.R. (2d) 333 (Ontario Divisional Court)).

42. Subsections 91(4), 104(13), and 105(1) and (2) of the *Labour Relations Act* provide that:

**91.(4)** Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting, the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

- (a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;
- (b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of;
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally; or
- (d) an order, when a party contravenes section 15, settling one or more terms of a collective agreement if the Board considers that other remedies are not sufficient to counter the effects of the contravention.

**104.(13)** The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceeding to present their evidence and to make their submissions.

**105.-(1)** The Board shall exercise the powers and perform the duties that are conferred or imposed upon it by or under this Act.

(2) Without limiting the generality of subsection (1), the Board has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (a.1) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing.
- (a.2) to summon and enforce the attendance of witnesses and compel them to



give oral or written evidence on oath, and to produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;

- (b) to administer oaths and affirmations;
- (c) to admit and act upon such oral or written evidence as it considers proper, whether admissible in court or not.
- (d) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board;
- (e) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice referred to in clause (d);
- (f) to enter upon the premises of employers and conduct representation votes during working hours and give such directions in connection with the vote as it considers necessary;
- (g) to authorize any person to do anything that the Board may do under clauses (a) to (f) and to report to the Board thereon;
- (h) to authorize the chair or a vice-chair to inquire into any application, request, complaint, matter or thing within the jurisdiction of the Board, or any part of any of them, and to report to the Board thereon;
- (i) to bar an unsuccessful applicant for any period not exceeding ten months from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding ten months from the date of the dismissal of the unsuccessful application;
- (j) to determine the form in which evidence of membership or application for membership or of objection to certification of a trade union shall be filed or presented on an application for certification and to refuse to accept any evidence not filed or presented in that form;
- (j.1) to determine, on an application for a declaration terminating bargaining rights, the form in which and the time as of which evidence shall be filed or presented concerning employees who no longer wish to be represented by a trade union and to refuse to accept any evidence not filed or presented in that form or by that time.
- (k) to determine the form in which and the time as of which evidence of representation by an employers' organization or of objection by employers to accreditation of an employers' organization or of signification by employers that they no longer wish to be represented by an employers' organization shall be presented to the Board in an application for accreditation or for a declaration terminating bargaining rights of an employers organization and to refuse to accept any evidence of representation or objection or signification that is not presented in the form and as of the time so determined.

- (l) to determine the form in which and the time as of which any party to a proceeding before the Board must file or present any thing, document or information and to refuse to accept any thing, document or information that is not filed or presented in that form or by that time;
- (m) to attach terms or conditions to any order.

Section 23(1) of the *Statutory Powers Procedure Act* provides that:

23.-(1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

43. Except where legislation specifically so provides, or arguably in extraordinary circumstances, costs are not an instrument for procedural control. In any event, the authority to award costs is not derived from the authority administrative tribunals are given to control their own processes. In *Reference Re National Energy Board Act*, [1986] 19 Admin L.R. 301, the Federal Court of Appeal expressly held that subsection 10(3) [now section 11(3)] of the *National Energy Board Act*, which is analogous to subsections 104(13) and section 105(2) in the *Ontario Labour Relations Act*, does not empower the National Energy Board to award costs. (Subsection 10(3) [now subsection 11(3)] of the *National Energy Board Act* read (and now reads):

The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, enforcements of its orders, the entry upon an inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges are vested in the Superior Court of Record.)

Consequently, the fact that the Board is the master of its own procedure does not confer a jurisdiction to award costs. In addition, the specificity with which the Board's powers have been enumerated in the *Labour Relations Act*, and the omission of any reference to costs in these, suggests that the Board has no costs jurisdiction.

44. Further, it is not apparent that the Board requires the power to award costs with respect to either procedural matters or the merits of matters which come before it. For practical purposes, the Board has always operated without any perceived need to award costs. There is nothing in the Board's history or jurisprudence which suggests that the Board requires the jurisdiction to award costs in order to fulfill its statutory mandate or obligations. There is nothing which indicates that the awards of costs which have been made had any effect on the labour relations of the parties involved, or on the labour relations in Ontario in any general way. Nor is there any indication that the Board's practice of not awarding costs has had any labour relations effect, either in specific cases or generally.

45. We have already noted that the Board has awarded costs as part of a "make-whole" remedy in the exercise of the Board's remedial power and discretion under subsection 91(4) of the *Labour Relations Act*. That approach has been adopted in British Columbia. In *Delta Optimist*, [1980] 2 Can. LRBR 227, the then British Columbia Labour Relations Board held that:

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Since this Board's authority to award compensation or provide any other remedies similarly hinges upon a finding of a violation of the Code (see Sections 8(4) and 28 (1), [now sections 14 and 133 respectively] a policy of awarding legal costs would suffer from the weakness identified by the Ontario Board; a respondent who successfully defends against a complaint in circumstances such as, for example, a frivolous allegation, could not be awarded legal costs.

In support of the Union's claim for compensation for its litigation expenses, counsel for the Union points out that the Ontario Board did not preclude the possibility that legal costs might be ordered in some cases. Upon noting its unwillingness to grant legal costs, the decision nevertheless states that: "This policy may be reviewed by the Board from time to time". Counsel for the Union, moreover, provides a partial

answer to the concern expressed by the Ontario Board by emphasizing this Board's express authority to "reject the complaint at any time" if it is "without merit" (see Sections 8(5) and 28(4)). But that is only a partial answer inasmuch as a respondent may incur substantial legal costs to demonstrate that a complaint is without merit.

There are, as well, other reasons that the Board is reluctant to award costs except in extreme circumstances such as those warranting a make whole remedy. Since the Board has no authority to make an order for compensation in relation to contraventions of Part V of the Code, any policy respecting legal costs could not be consistently and uniformly administered in relation to all complaints and applications under the Code. In addition, we do not take the Union to be arguing that legal costs should be awarded in all matters before the Board and thus any policy with respect to costs would require that distinctions be drawn between those cases where an order for costs would be warranted and those where it would not. It is hard to imagine a judgment less amenable to predictable, objective standards. Furthermore, a policy of granting legal costs would necessitate an administrative procedure or apparatus to review the reasonableness of the legal costs claimed and that exercise is not conveniently achieved by the resources available to the Board; it is undertaken at this time only in those extreme cases where a make whole remedy is appropriate. Finally, while the Union has undeniably been put to considerable cost and expense by reason of the Respondents' strategy in this case, compensation for litigation expenses would not remedy the real harm inflicted by the unfair labour practices committed by the Respondents or the aggravated effect of those unfair labour practices.

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In *Scott v. B.C. Government Employees' Union* [1992] No. C104/92, Industrial Relations Council (as it then was), it held that:

There is no question that legal costs and related expenses are within the ambit of the Council's jurisdiction under Section 8 and 28 to fashion remedies which respond appropriately to the dispute between the parties.

A review of the relevant jurisprudence reveals that, like all remedies the Council may award, legal costs are, first and foremost, discretionary, a function of policy, and only awarded where the Council finds a breach of the Act. Second, this remedy, like all others, must fall within the governing notion of remedies being remedial, not punitive. Third, legal costs may be awarded where traditional remedies have proven ineffective. Fourth, if they are going to be awarded at all, it is normally in cases where the conduct complained of has been particularly egregious. Fifth, the most usual circumstances in which legal costs are awarded are Section 7 applications where different considerations apply.

Where the Council upholds an individual's Section 7 complaint of unfair representation by a trade union, the reasoning is, generally speaking, that the individual union member and the union have divergent and conflicting interests. Independent counsel for the individual is perceived as the best way to protect the individual's interests. The equities of the situation demand that lack of financial resources not prevent the individual from pursuing rights under the Act or be financially penalized for doing so: consequently, a make-whole order is made.

Applying these principles to the case at hand, I find first, that an order for legal cost is not necessary in order to respond appropriately to the dispute between the parties. In my view, the remedies I did award amply compensated the Union and the employees for the Employer's actions.

Second, I did not find the Employer's actions to be so egregious as to justify an award of legal costs. In fact, in my original decision I noted that the Union had acted aggressively and with some degree of provocation toward the Employer both before and after certification and particularly at the second and third collective bargaining sessions.



Third, there is no evidence before me that an award of legal costs and related expenses would be equitable in the particular circumstances of this case. If such an order does not address an inequity and set it right, then such an order would, in my view, be punitive.

Fourth, except for the successful Section 7 complainant, policy considerations generally urge the Council away from rather than toward, granting legal costs to successful applicants. At least one reason for this is the difficulty of awarding legal costs to a successful defendant. One consequence of the requirement that a remedy can only follow a breach of the Act is that an employer or a union that successfully defends against what turns out to be an unsubstantiated or unwarranted complaint, cannot be awarded its legal costs. This lack of balance in the legislation suggests that it is only in exceptional circumstances that legal costs should be awarded.

The Union's request for an order against the Employer for legal costs and related expenses is dismissed.

Subsequently the Industrial Labour Relations Council of British Columbia held that it had the jurisdiction to award costs under provisions in the then British Columbia *Industrial Relations Act* (now the *Labour Relations Code*) analogous to subsection 91(4) in the Ontario Act. In dismissing a request for reconsideration of this decision, reported at (1993) 16 CLRBR (2d) 65, the Industrial Relations Council stated that:

Two general principles govern all remedies awarded in the labour relations context, including make-whole orders. First, the purpose of the Council's remedial authority is to place the aggrieved party, so far as possible, in the position it would have been, had the breach of the Act not occurred: *Clarke Reefer Lines Ltd.*, B.C. I.R.C. (No. C223/88); *White Spot Ltd.*, *supra*. Second, remedies must be compensatory in nature and not punitive. *Century Plaza Hotel Ltd. and H.R.E.U.*, *Local 40*, [1979] 3 Can LRBR 49 (BCLRB No. 32/79); *Ron Hatfield and Wayne R. Lipskie*, B.C. I.R.C. (No. C63/90), reconsideration of IRC No. C105/87.

It is beyond dispute that, in appropriate circumstances, the Council may award legal costs as an element of a remedial order: *C.P.U. Local 115 v. McNamara*, B.C.S.C. (Vancouver Registry A891161), December 18, 1989, upholding *Tony McNamara and Pierre Comeau*, B.C.I.R.C. (No. C302/88) and B.C. I.R.C. (No. C25/90) [reported 6 CLRBR (2d) 290]. The Council and the predecessor Labour Relations Board have, however, been very reluctant to exercise the authority to award legal costs. This reluctance arises from an imbalance in the availability of the remedy to the labour relations community. Under the Act, a statutory violation must be found before a remedy can be awarded: *The Delta Optimist and Vancouver-New Westminster Newspaper Guild, Local 115*, [1980] 2 Can LRBR 227 (BCLRB No. 26/80); *Harry Metz*, B.C. I.R.C. (No. C77/89). As a result, successful defendants are unable to secure legal costs. The one-sided nature of this potential remedy leads to a perception of unfairness, and militates against its general acceptance as a matter of policy. Also, a policy of awarding legal costs cannot be consistently applied because there is no authority to award such compensation under Part 5 of the Act. In response to these factors, the Council has denied requests for legal costs unless exceptional and compelling circumstances exist: *Imperial Parking Ltd.*, B.C. I.R.C. (No. C220/89).

Where the Council and the Board have made an award of legal costs, it has generally been in the context of a make-whole order. The development of the make-whole order, including an order than an employer pay the union's legal costs, began in 1975 when the Board's remedial authority under s.28 was expanded. The relevant principles underlying make-whole orders were summarized in *Kidd Brothers Produce Ltd. and Miscellaneous Workers etc. Union, Local 351*, [1976] 2 Can LRBR 304 (BCLRB No. 53/76) [quoted in *Century Plaza Hotel Ltd, supra*, at pp. 70-71]:

First, these orders are of a remedial rather than a penal nature. Second, they are employed in situations where the use of a more traditional remedy, i.e., a cease and desist order, would be inadequate. In these instances, the Employer has often "... already harvested the 'fruits of its violations'". Third, these orders are often issued in cases where the Board has withheld a draconian form of relief. Fourth, these orders arise under the Code, from the expansion of the Board's remedial authority. The pur-

pose of the expansion was to remove the "...artificial restrictions on the type of remedy which may be ordered..." in the new situation created by the Code where the Board finds itself "...the chief agency for giving effect to the law..."

In the non-s. 7 context, make-whole orders involving legal costs have traditionally been granted in circumstances where an employer's conduct deliberately frustrated remedies obtained by the union in earlier proceedings: *Kidd Brothers Produce Ltd.*, *supra*; *Robinson Little Co.*, B.C.L.R.B. letter decision dated March 15, 1986, referred to in *Century Plaza Hotel Ltd.*, *supra*; and *Century Plaza Hotel Ltd.*, *supra*.

46. The B.C. Board has recently confirmed this approach to costs for all cases, including fair representation proceedings, in *Allan Kelland and David Dorris*, a decision dealing with requests for reconsideration in two unrelated duty of fair representation proceedings (BCLRB No. B419/93, December 14, 1993).

47. The British Columbia Supreme Court has confirmed this jurisdiction to award costs on a make-whole basis in *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 170 v. IRC, Steisslinger et. al.*, March 9, 1993, Vancouver Registry A922146, unreported (an application for judicial review of the Industrial Relations Council of British Columbia's decision in a duty of fair representation case: IRC No. C68/91; reconsideration denied, IRC No. C231/91). Previously, in *McNamara v. Canadian Paperworkers Union, Local 1115*, (1989) B.C.J. No. 2447, Vancouver Registry No. A891161 (an application for judicial review of an I.R.C. decision in that case at [1989] 20 CLLC ¶16,014), the British Columbia Supreme Court held that:

8. In my opinion, the provision to "rectify a contravention of the Act" in s. 8(4)(b) and 28(1)(b) coupled with an express provision in s. 28(1)(d) to "make an order determining and fixing the monetary value of an injury or loss suffered by a person as a result of a contravention of the Act" clearly indicates the legislative intent to include within Council's broad remedial jurisdiction a mandate to order costs in appropriate circumstances. The next question I must then consider is whether Council's decision to order that the Union reimburse McNamara and Comeau's reasonable legal and other expenses, including costs was patently unreasonable? I think not.

9. I am of the view that Council's order in this case was consistent with its past practice and with the spirit and intent of section 27 of the Act. It is the established policy of Council that where other effective remedies exist a make whole remedy will not be ordered. In the case at bar, Council ordered costs because of the dilatory conduct of the Union to restore the membership rights of McNamara and Comeau frustrating the effect of the Original Panel's order. From the outset, Council repeatedly expressed its position that its order be implemented in a timely manner so as to provide an effective remedy to McNamara and Comeau. In Council's opinion there was no other practical way to remedy the wrong and the special expertise of Council put it in the best position to determine the appropriate remedy. It is the very circumstances found in this case that renders an order for costs reasonably within the scope of Council's remedial jurisdiction.

(Subsequently, the Industrial Relations Council dealt with the costs issues in that case subject to taxation at (1990) 6 CLRBR (2d) 290.)

48. The Canada Labour Relations Board has also held that it has the power to award costs against a respondent under its rectification power, and against an unsuccessful complainant under its power to make orders incidental to the objects of the *Canada Labour Code* (*National Bank of Canada*, 84 CLLC ¶16,038; *British Columbia Telephone Co.*, (1986) 65 CLRBR di 93; and see *Udvarkely*, [1979] 2 Can LRBR 569 and *Lalancette* (1990) 14 CLRBR (2d) 80). However, the Canada Board has displayed the same disinclination to award costs as the British Columbia labour relations tribunal of the day and the Ontario Labour Relations Board.

49. With respect, we find ourselves unable to follow a make-whole approach to costs.

50. First, the make-whole theory is inconsistent with the theory and purpose of legal costs as such (see paragraph 38, above).

51. Second, as the jurisprudence of this Board and in British Columbia suggests, only a successful applicant is entitled the costs on such a theory. Consequently, make-whole costs are neither reciprocal, nor fault-based in any traditional sense.

52. Third, a make-whole theory suggests that costs flow from a breach of the *Labour Relations Act* (or other legislation under which the Board has jurisdiction). Costs do not form part of any common-law theory of damages. Costs have not been considered to be a form of damages. Costs are not remedial in the sense that an award of costs as such cannot properly be dependent upon a breach of a statute.

53. Fourth, the number and kind of cases in which make-whole costs have been awarded suggests defects in the make-whole theory of costs. Why isn't every successful applicant entitled to be made whole? Why do costs depend on the nature or degree of a breach of the *Labour Relations Act*? If costs are awarded only to successful applicants in *some* cases in which a responding party's conduct has been found to be particularly egregious, are costs not being used in a punitive way; that is, in order to penalize a particularly "bad" responding party, rather than as compensation for damages incurred as a result of a breach of the legislation?

54. Fifth, how does the Board deal with the situation of an unrepresented successful applicant in any case, but particularly in an egregious case, since it appears that in most Canadian jurisdictions, including Ontario and British Columbia, a litigant not represented by counsel cannot, on any traditional theory of legal costs, recover costs other than disbursements? Does this mean that only successful applicants represented by counsel are entitled to be made-whole? (See, *Re Tate and Deerpark Investments Inc. Ltd.*, [1987] 44 D.L.R. (4th) 573 (Ontario Divisional Court); *O'Connell v. Custom Kitchen & Vanity*, (1986) 56 O.R. (2d) 58 (Ontario Divisional Court); *Kowarsky v. Quebec (Procureur General)*, (1988) 21 Q.A.C. 196 (Court of Appeal); *Kendell v. Hunt*, *supra*; *UFFA Management Ltd. v. Accurate Bailiff Collection Agency Ltd.* [1990] 19 ACWS (3d) 1381 (B. C. Court of Appeal); *Skidmore v. Blackmore*, [1990] 5 WWR 634 (B. C. County Court); *Law Society of P.E.I. v. Johnston* (1988) 54 D.L.R. (4th) 18 (P.E.I. Court of Appeal); but see also, *McBeth v. Governors of Dalhousie College & University*, (1985) 68 NSR (2d) 265 (Nova Scotia Supreme Court); (1986) 26 D.L.R. (4th) 321 (Nova Scotia Supreme Court, Appellate Division), in which costs were awarded to a successful unrepresented non-lawyer party on the basis of the Canadian Charter of Rights and Freedoms, a basis specifically rejected in *Law Society of P.E.I. v. Johnston*, *supra*, and *Skidmore v. Blackmore*, *supra*; and see also *Davidson v. Canada*, (1989) 36 Admin L.R. 251 where the Federal Court of Appeal relied on section 15 of the Charter and held that a lawyer representing himself is entitled to costs only to the same extent as any other self-represented litigant and not to costs relating to his own services as a solicitor; and see also *Jaffe v. Dearing*, (1992) 32 ACWS (3d) 1276 (Ontario Court General Division) where costs were awarded to a Florida lawyer who successfully acted for himself in the claim for fees and where the court noted that the former rule had been abolished in England by legislation (*The Litigants in Person (Costs and Expenses) Act, 1975*) - something which we would have thought suggests that an unrepresented litigant is not entitled to costs unless legislation provides otherwise.)

55. A number of reasons have been advanced as justification for the apparent discrepancy between a true make-whole approach to costs and the actual practice of awarding costs in so few cases that the cases in which costs have been awarded can safely be regarded to be anomalies: (a) costs will discourage parties from pursuing meritorious claims; (b) it is in the public interest that labour relations disputes be settled and costs will interfere with the settlement process; (c) awarding costs will have a negative impact on labour relations by identifying a winner and a loser, particularly where there is a continuing relationship between the parties; (d) costs would require the Board to engage in a time consuming process which would distract the Board from its primary task under the *Labour Relations Act*; (e) the difficulties involved if success is divided between the parties; (f) the Board is ill-equipped to assess and award costs. Whatever the merits of these policy laden arguments, they beg the jurisdictional question. The question is not whether the Board should be able to award costs generally or in a specific case, but whether it has the jurisdiction to do so at all.



56. Accordingly, we return to the first question, which is not addressed by any of the policy laden reasons for not awarding costs; that is, does the Board have the jurisdiction to award costs? As a creature of statute, an administrative tribunal like this Board has only the powers conferred upon it by legislation. The Board has no inherent jurisdiction to award costs. Further, in the context of the recent comprehensive review of the *Labour Relations Act* and the express granting to other tribunals of an authority to award costs, in addition to the remedial jurisdiction and the power to control their own practice and procedures which, as does this Board, these tribunals enjoy, there is no legislation which expressly gives the Board an authority to award costs. Finally, no costs jurisdiction can be implied, either from the provisions of any legislation, or from any apparent need for the Board to be able to award costs.

57. Nor is the situation any different when the Board acts as an arbitrator under section 126 of the *Labour Relations Act*, where the Board has all the powers of the Board and of a board of arbitration (*Re International Association of Heat & Frost Insulators & Asbestos Workers, Local 95 and Master Insulators Association of Ontario et al.*, (1979) 25 O.R. (2d) 8 (Ontario Divisional Court)). In the absence of a specific provision in the collective agreement under which the grievance is brought, there is nothing which gives the Board an express or implied jurisdiction to award costs notwithstanding any suggestion to the contrary in cases like *Joe Arban Contractor Ltd.*, *supra*, (see, *Parlay Construction Ltd.*, [1984] OLRB Rep. Aug. 1120; *Standard Insulation Ltd.*, [1984] OLRB Rep. Nov. 1622; *Re Pictou District School Board and CUPE, Local 867*, (1987) 34 LAC (3d) 307; *City of Dawson Creek*, (1987) 28 LAC (3d) 372).

58. In the result, we find ourselves constrained to conclude that in the absence of a specific provision in a collective agreement in a section 126 proceeding the Board has no jurisdiction to award legal costs as such. This is not to be taken to be a suggestion that the Board does not have the jurisdiction to fashion remedies appropriate to the cases which come before it. The Board has the power and may find it appropriate to award damages which include things which look like but are not "legal costs" properly so called, or which are "legal costs" but are also damages arising out of a breach of the *Labour Relations Act* which are deserving of compensation.

20. There is now some court jurisprudence which suggests that a person unrepresented by counsel may be able to obtain some order for costs, although this not appear to be the law in Ontario. However, nothing else has changed since the *Bellai Brothers Ltd.*, *supra*, decision, and I am satisfied, for the reasons given in *Bellai Brothers Ltd.*, *supra*, that the Board does not have the jurisdiction to award costs, either as part of the make whole remedy or otherwise, except in those limited circumstances in section 126 proceedings where a construction industry collective agreement empowers the Board to do so.

21. The applicant's request for compensation in that respect is therefore dismissed.

22. In the result, the applicant's discharge grievance is to proceed to arbitration forthwith in accordance with paragraph 15, above. The responding trade union is directed to provide the Board with a copy of any arbitration award which issues with respect to the grievance, or to advise the Board if the matter has been otherwise resolved.

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**1277-95-M Donald Paquette, Applicant v. International Union of Operating Engineers, Local 793 & Edgar Doull, Responding Parties**

**Financial Statements - Applicant complaining that audited financial statement furnished by local union inadequate - Application dismissed**

**BEFORE:** *Ken Petryshen*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**DECISION OF THE BOARD;** October 12, 1995

1. This is an application in which Mr. Paquette complains on behalf of himself and other members of the International Union of Operating Engineers, Local 793 ("Local 793") that an audited financial statement furnished by Local 793 is inadequate. Local 793 takes the position that the membership has been provided with an adequate financial statement and that this application should be dismissed without a hearing.

2. Section 87 of the *Labour Relations Act* provides as follows:

87.-(1) Every trade union shall upon the request of any member furnish the the member without charge, with a copy, of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to the members of the trade union that the Board in its discretion may direct, and the trade union shall comply with the direction according to its terms.

(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the Public Accountancy Act or a firm whose partners are licensed under that Act.

3. On or about December 21, 1994, Mr. E. Doull was appointed as International Supervisor to conduct the business and finances of Local 793 by the International President. It appears that the International took this course of action due to concerns of the members about the financial viability of Local 793. It is those same concerns which have undoubtedly led to the filing of this application.

4. The audited financial statements to the end of 1994 were not completed until May 1995. Once completed, they were made available to all members requesting copies. In addition, the audited financial statements were published in a publication of Local 793, which was sent to all members of Local 793. Local 793 contends that it has complied with its obligations under section 87 of the Act by providing its members with adequate audited financial statements certified by Mr. Doull.

5. Local 793's financial statements for the period ending December 31, 1994 were audited by BDO Dunwoody, a national firm of chartered accountants. The auditors' report indicates that the audit was conducted "in accordance with generally accepted auditing standards". The chartered accountants also gave their opinion that:

... these financial statements present fairly, in all material respects, the financial position of the Union as of December 31, 1994 and the results of its operations and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

6. In a letter dated August 14, 1995, Mr. Paquette requests that Local 793 provide him with the following information:

- (a) all contributions made by all contractors for pension and benefit contributions, monthly dues and working dues;
- (b) all moneys paid by the contractors to the Union in trust for grievances filed,
- (c) a complete accounting of the business manager and agents' credit cards.

7. Attached to the August 14, 1995 letter is a list of what Mr. Paquette refers as 16 discrepancies concerning the audited financial statements. These alleged discrepancies are set out below:

1. The scope of audit did not extend to an examination of the payroll records — it should as the payroll is substantial.
2. Membership dues verification should not be limited to the amounts recorded in the records of the union.
3. Members' equity dropped from prior year amount of \$8,253,078. to \$1,186,160. — was there not a warning in 1993 or reference in the 1993 reports.
4. Administrative costs are up significantly due to consulting fees (more detail — to whom and what?) and interest charges.
5. Salaries & related costs of \$4,996,381. are a high percent of the expenses— should be audited as noted in (1.) and broken down [sic] by function in a schedule.
6. Net loss from Morrisburg operations need further review: professional fees \$157,429 vs \$9,679 in 1993, salaries & benefits of \$662,821 vs \$187,184. & severance pay of \$53,046.
7. Write down of Morrisburg property of \$3,633,858. What caused it so suddenly?
8. Accounts payable and benefits payable — mainly due to lien of \$2,000.00. and \$1,450,000. was accrued. Why a lien and for what and is the accrual sufficient?
9. An update should be available as to the resolution of the bankers and restructuring concerns.
10. Certain employees (who are they) signed a termination of employment & severance pay agreement. Who approved this.
11. Status of the petition in bankruptcy filed by the contractor.
12. Automobile & travel expense of \$399,211 is high. A breakdown should be provided.
13. An interim financial report as at June 30, 1995 should be provided to show current position and trend.
14. A forecast and budget should be provided.
15. Internal controls should be reviewed and updated.
16. Management accounting consulting services are recommended to assist in the critical current financial demands.



8. By letter dated October 2, 1995, Mr. Paquette replied to Local 793's response. He submitted that the Act was not complied with since Mr. Doull is a Trustee and section 87(1) of the Act requires that a copy of the audited financial statement be "certified by its Treasurer or other officer responsible for the handling and administration of its funds ...". The other comments made in the reply and the affidavit of Brian McCarthy, which was attached to the October 2, 1995 letter, were either irrelevant or not helpful.

9. After considering the positions of the parties as set out in the application, the response and the letters filed with the Board, the Board finds that even if it accepted all of the facts as stated by the applicant to be true, the application does not make out a case for the remedy requested. The Board finds that Local 793 has met its obligations under section 87 of the Act to its members.

10. Section 87 is not an avenue by which union members can raise concerns regarding the administration of their union. In *Edward Miller*, [1983] OLRB Rep. Nov. 1864, the Board made the following comments at paragraph 14:

... From these submissions, we gather that Mr. Miller is unhappy with the manner in which the union is being run, and in particular, unhappy with the union's executive which he feels is operating in violation of the union's constitution. Mr. Miller is also of the view that the collective agreement negotiated by the union is "no good". In addition, Mr. Miller objects to a number of expenditures by the union, particularly those related to professional services. Mr. Miller concluded his submissions by charging the executive of the union with fraud and requesting that the Board place the union under trusteeship. From his submissions it is clear that Mr. Miller has misunderstood the purpose behind section 85 [now section 87], which is only to ensure that a union member can receive an audited financial statement of the union's affairs to the end of its last fiscal year. Mr. Miller has received such a statement. Further, at the hearing the union went further and indicated that in the future it will keep proper financial records, and on a yearly basis prepared audited financial statements. The section has served its purpose. If Mr. Miller is unhappy with the way the union is being run, he can seek to influence its affairs through its internal organs. If he feels the executive has breached the union's constitution, he has the right as a union member to seek recourse in the civil courts. Alleged breaches of the criminal law are a matter for the police and the criminal courts. Any alleged violations of provisions of the *Labour Relations Act* can be dealt with by filing proper complaints with this Board. However, none of these are matters that can be dealt with in the context of a proceeding under section 85 [now section 87].

11. The information the applicant requests as set out in paragraph 6 above would require a breakdown of various components of the audit. However interesting or useful such information might be, section 87 does not oblige a union to provide a financial statement containing such a breakdown. Underlining the discrepancies that are set out in paragraph 7 above are either the applicant's disagreement with items disclosed by the audit or the applicant's views or suggestions as to how Local 793 should be administered. The applicant and the members of Local 793 are entitled as a result of section 87 of the Act to receive an audited financial statement of Local 793's affairs to the end of the last fiscal year certified by an officer responsible for handling the administration of its funds. This is what the applicant and the members of Local 793 received. Whether he is an International Supervisor or a Trustee, Mr. Doull is an "officer responsible for the handling and administration of its funds ...". If the applicant were correct in his assertion, then no local under trusteeship would be in a position to comply with section 87(1) of the Act. The Board is satisfied that the members of Local 793 were furnished with adequate audited financial statements.

12. For the above reasons, this application is dismissed.

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**1247-95-R International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 173, Applicant v. Niagara Falls Imax Theatre and/or Niagara Falls Theatre Venture, Responding Party v. Bernard Willer, Objector**

**Certification - Board finding that IATSE meeting all three statutory conditions to establish its craft status in respect of projectionists**

**BEFORE:** *Gail Misra*, Vice-Chair, and Board Members *R. W. Pirrie* and *D. A. Patterson*.

**APPEARANCES:** *Bernard Fishbein* and *Larry Miller* for the applicant; *A. P. Tarasuk*, *Peggy Pelletier*, and *Sonja McGibbon* for the responding party; *C. J. Abbass* for the objector.

**DECISION OF THE BOARD;** October 6, 1995

1. In this application for certification the applicant is seeking to represent a bargaining unit comprised of all projectionists in the employ of the responding party in the city of Niagara Falls, save and except Managers and persons above the rank of Manager. The responding party and the objecting employee do not agree to this bargaining unit description, and each has its own preferred bargaining unit description. Nonetheless, the parties had agreed at the outset of the hearing that the Board should decide whether the applicant has craft status with respect to the projectionists, before proceeding to hear the other matters in dispute.

2. Section 6(3) of the *Labour Relations Act*, the provision which addresses craft units, states as follows:

6.-(3) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to the skills or craft, and the Board may include in the unit persons who according to established trade union practice are commonly associated in their work and bargaining with the group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

3. The Board has required an applicant seeking a craft bargaining unit to meet three conditions in order to establish craft status. In *Art Wire & Iron Co. Ltd.*, 54 CLLC Para. 17,080, the Board outlined the conditions as follows:

1. The group of employees concerned exercise technical skills or are members of a craft by reason of which they are distinguishable from other employees;

2. the group of employees concerned commonly bargain separately and apart from the other employees through a trade union that, according to trade union practice, pertains to such skills or craft; and,

3. the application for certification is made by a trade union pertaining to such skills.

4. In its decision of September 28, 1995 [reported at [1995] OLRB Rep. Sept. 1209] the

Board found that the first condition, the skills and craft component, had been satisfied by the applicant (also referred to as the “union” or “Local 173”..

5. In *Orange-Roof Canada Limited*, [1974] OLRB Rep. Nov. 761, the Board outlined as follows how the second element of section 6(3) is to be construed:

8. As for the second requirement, these same cases, reflecting trade union practice in relation to such employees in this industry, eliminate it as an impediment to the applicant's claim. *There is no need for the applicant to establish that these specific employees in this specific company commonly bargain separately and apart having done so for the industry in general*; (see *The Steel Co. of Canada Ltd.* 46 CLLC Para. 16,463; *N. Slater Company Limited* 52 CLLC Para. 17,029). ...

(emphasis added)

6. With regard to this second element of section 6(3), this panel of the Board adopts the jurisprudence of the Board, as outlined above, and as stated in *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. March 481, paragraph 61:

As a matter of syntax, section 6(3) begins with a reference to the “group of employees” whom the union seeks to represent - here a group of electricians employed in the respondent's mining operations in Timmins, Ontario. This is the reference group to which the rest of the section relates, and it might be said that the practice of separate bargaining which the union must establish is in the respondent's enterprise, or in Ontario, or even in Timmins. However, in our view, such interpretation would be an unduly restrictive reading of the terms of section 6(3), which the Board has not adopted heretofore, and which is not justified in light of the section's purpose and historical roots. However, *assuming* the union's position that the subject group of employees can be described generically, and are, “electricians”, the union must still put before the Board a coherent body of collective bargaining experience to demonstrate that it *commonly* bargains on behalf of such employees, separately and apart from other employees. ...

7. The responding party and the objector posit that the union is actually applying for a craft unit of persons who do projectionist work and other unskilled work. Therefore, on this argument, the union must satisfy the Board that it has bargained separately and apart for like groups, has an established history of doing so, and if it cannot prove these elements, the Board cannot find that the union has craft status with respect to this group of employees.

8. The applicant has, throughout this proceeding, maintained it is seeking to represent only the projectionists at this workplace. As the Board's decision of September 28, 1995 notes, it was conceded by the employer that it complies with the provisions of the *Theatres Act* and there was no dispute that the theatre in question shows film of the type which requires that a projectionist carrying a valid license be present to run such film. The Board is satisfied that the bargaining unit being proposed by the union, and the one it is claiming is a craft unit, is one composed of licensed projectionists. Given the determination the Board made as a consequence of the application of the *Theatres Act*, it was unnecessary for the Board to hear evidence of what specific duties projectionists have at this theatre.

9. The fact remains in this case that as a result of legislation this employer must use licensed projectionists to show films at its establishment. No one except a licensed projectionist can screen the films. The Board, for the reasons given in the September 28, 1995 decision, therefore found that the projectionists at this IMAX theatre were members of a craft by reason of which they were distinguishable from the other employees. For the purposes of reaching our decision on the other elements of section 6(3) of the *Labour Relations Act*, the group of employees the Board must concern itself with, therefore, is these projectionists. It may be that in the past the responding party has required projectionists to perform tasks in addition to those required in the projection booth. If that is so, the parties will have to negotiate how work will be distributed in the future if



the union is certified to be the bargaining agent for the projectionists. However, the union cannot be precluded from making a craft unit application simply because an employer structures its workplace to mix craft and non-craft related tasks. The responding party could provide the Board no decisions in support of its position on this issue.

10. It was suggested by the responding party that jurisdictional disputes may ensue if the Board granted the craft unit the union is seeking in this application. To the Board's knowledge there is no other bargaining agent representing any other employees at this workplace. It is therefore unclear who will be claiming work jurisdiction. In any event, the Board has stated that overlapping or competing claims on work are not proper matters to be addressed in a representation proceeding of the type before us. Such issues are better dealt with under the provisions of a collective agreement or the provisions of the Act designed for the resolution of work assignment disputes.

11. The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators (the "International") was established in 1893. As the Board found in *Famous Players Inc.*, [1995] OLRB Rep. July 954, this union represents employees in the entertainment industry and has a long history of organizing along craft lines. In 1909 the International Alliance of Theatrical Stage Employees of the United States and Canada granted a charter to the applicant, Local 173, a Toronto local of the International union. The charter required the local to act in accordance with the Constitution and By-Laws of the International. The present constitution of the International lists Local 173 as one of its affiliated local unions, chartered to represent Motion Picture Projectionists, Operators, and Video Technicians. Motion Picture Projectionists and Operators are synonyms and in this decision the Board will refer to the two groups as "projectionists". Article 18, Section 9 of the Constitution and By-Laws of the International states that the working jurisdiction of the affiliated local union is expressly limited to that defined by the charter issued to that local.

12. It was uncontested that the union had submitted all of the collective agreements negotiated by Local 173. Those collective agreements were for projectionists and service technicians for theatre sound and projector equipment. Most of the union's bargaining rights have been acquired through voluntary recognition. In particular, the union has had bargaining relations with Famous Players and Cineplex Odeon for between 40 and 50 years. The only certification applications made by the union have been to represent projectionists, and until this application, employers have agreed to bargaining units comprised of only projectionists. Hence, the applicant has never been required to prove its craft status despite having been chartered by the International union to represent projectionists in 1909. In July 1995, as a result of a successful application under section 63 of the Act, Local 173 acquired the bargaining rights for projectionists from eight other IATSE locals across Ontario (see *Famous Players Inc.*, cited above).

13. There is no evidence that during its 86 year history as a "projectionist" local that Local 173 has ever represented any persons other than those for whom it has been chartered. The projectionists the union is applying to represent in the present application are a definable group of employees who fall within the category described generically as "motion picture projectionists, operators, and video technicians". The Board is satisfied that this is a group for which this union has commonly bargained separately and apart from other employees, and the Board is further satisfied that the applicant is a trade union which has an established practice of bargaining on behalf of this craft.

14. There is no dispute that the application for certification is being made by Local 173. The Board accepts that Local 173 is a chartered local trade union of the International which pertains to

the skills of motion picture projectionists, operators and video technicians, commonly referred to as projectionists and technicians.

15. The employer and objecting employee take the position that an IMAX theatre is different from other movie theatres, that projectionists in such theatres do not have to exercise their skills, and that the Board should therefore not grant craft status in this application. The Board has dealt with this issue in its decision of September 28, 1995 and reiterates that the nature of the technical skills exercised is not the governing factor, provided that the technical skills are sufficiently used to distinguish the job from others in that workplace. (See *Cooper and Beatty Limited*, 58 CLLC Para. 18,100, *Commercial Papers Limited*, [1969] OLRB Rep. Nov. 939, and *Harbourfront Corporation*, [1982] OLRB Rep. Nov. 1624).

16. The responding party provided the Board with two decisions in its argument. *British Columbia Place Ltd.*, [1987] 15 CLRBR (NS) 106, is a reconsideration decision of the Labour Relations Board of British Columbia. In that case IATSE Local 118 was seeking reconsideration of the Board's decision not to grant the union a craft unit of audio-visual equipment operators. The governing legislation in British Columbia at that juncture is different in a significant aspect from the section 6(3) of the Ontario *Labour Relations Act*. Section 41(1) of the B.C. *Labour Code* states as follows:

Where a group of employees belong to a craft or group exercising technical or professional skills which distinguish it from the employees as a whole, and they are members of one trade union pertaining to the craft or skills, the trade union may, subject to sections 39, 40, 43, and 45, apply to the board to be certified as bargaining agent for the group if it is otherwise an appropriate bargaining unit.

(emphasis added)

We have reviewed this decision but did not find it to be of assistance to us in reaching our decision since the legislative framework in British Columbia was so different from the Ontario Act, and the fact situation in that case made it distinguishable from the situation before us. In addition, the B.C. Board relied on American jurisprudence in this case, which also appeared to reflect a different regime.

17. *Hornco Plastics Inc.*, [1993] OLRB Rep. May 411, was also submitted to the Board by the responding party. This case addressed issues of fragmentation of bargaining units but not in the context of craft units. Since the issue to be decided by the panel in this case is one of craft status, we did not find *Hornco Plastics* to be of assistance to us in reaching our decision. While the Board is cognizant that a finding of a craft unit in the case before us will lead to some fragmentation of a potentially larger bargaining unit, that is not a consideration which section 6(3) contemplates.

18. On behalf of the objecting employee it was argued that since the union did not have a large number of collective agreements for projectionists, despite having represented projectionists since 1909, the Board should find that the union had not established sufficient history of bargaining separately and apart in this industry. This argument has no merit. The Board does not gauge bargaining history by looking at how many bargaining units an applicant has or the number of collective agreements reached. The issue for the Board is the quality of the bargaining history: Among other factors the Board may consider who the applicant has represented historically, how long that history is, and whether the applicant has been consistent in maintaining its practice of representing only those for whom it is claiming craft status.

19. While the Board is not bound by the decisions made by Labour Relations Boards in other jurisdictions, it is worth noting that the applicant supplied the Board with a current collective



agreement between the Societe du Vieux-Port de Montreal Inc. (Cinema IMAX) and IATSE Local 262 in which the employer recognized the union as the bargaining agent for all employees who were performing the duties of projectionists for the IMAX Cinema in Montreal. That collective bargaining relationship came about as a result of the Canada Labour Relations Board certifying the union as the bargaining agent for the projectionists on February 14, 1990. In *Saskatchewan Science Centre Inc.* (Saskatchewan L.R.B. File No. 288-94, Feb. 21, 1995), the Saskatchewan Labour Relations Board certified IATSE Local 295 as the bargaining agent for a bargaining unit comprised of all the projectionists at the Kramer (IMAX) Theatre in the Saskatchewan Science Centre. It would appear that bargaining units comprised solely of projectionists working in IMAX theatres have been found, by other labour relations tribunals, to be appropriate bargaining units.

20. For all of the above reasons, the Board finds that the three conditions referred to in section 6(3) of the Act have been satisfied.

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**4182-93-G; 0484-94-R; 1801-94-R** International Association of Bridge, Structural and Ornamental Iron Workers, Local 765, Applicant v. **PCL Constructors Eastern Inc.**, Responding Party; International Association of Bridge, Structural and Ornamental Iron Workers, Local 765, Applicant v. PCL Constructors Eastern Inc.; PCL Construction Limited; PCL Industrial Constructors Inc.; PCL Constructors Inc.; PCL Employees Holdings Ltd.; PCL Construction Holdings Ltd.; PCL Construction Resources Inc.; PCL Construction Group Inc., Responding Parties; International Union of Operating Engineers, Local 793, Applicant v. PCL Constructors Eastern Inc.; PCL Construction Limited; 18127 Alberta Limited; PCL Industrial Constructors Inc.; PCL Constructors Inc.; PCL Civil Constructors (Canada) Inc.; PCL Employees Holdings Ltd.; PCL Construction Holdings Ltd.; PCL Construction Resources Inc.; PCL Construction Group Inc., Responding Parties

**Abandonment - Bargaining Rights - Related Employer - Remedies - Sale of a Business -** Responding parties submitting that related employer applications and sale of business applications made by Ironworkers' union and Operating Engineers' union ought to be dismissed because applicants had abandoned bargaining rights or had delayed in asserting bargaining rights or should be estopped from asserting their bargaining rights - Applications allowed - Board making declaration effective the date that the first application was filed, but exempting any projects which any responding party had contracted to perform but which was not completed prior to that date

**BEFORE:** *G. T. Surdykowski*, Vice-Chair, and Board Members *W. N. Fraser* and *H. Kobryn*.

**APPEARANCES:** *Gary Caroline, D. Melvin* and *K. Lew* for the applicant; *Bruce W. Binning* and *M. Necula* for the responding parties.

**DECISION OF THE BOARD;** October 13, 1995



## I

1. Board File No. 4182-93-G is a referral to the Board of a grievance in the construction industry, under section 126 of the *Labour Relations Act*. At the first day of hearing in these proceedings, the parties agreed that the hearing of the grievance should be adjourned *sine die* pending the disposition of the other two applications.

2. Board File No. 1801-94-R and Board File No. 0484-94-R are applications for relief under sections 1(4) and 64 of the *Labour Relations Act*. In them, the applicants "Operating Engineers" and "Iron Workers" respectively seek declarations that the responding parties constitute a single employer for purposes of the Act, or that there has been a sale of a business between them; allegedly to preserve the bargaining rights each trade union holds.

3. In the course of the proceedings, upon request of the applicants and without objection from any employer party, PCL Employees Holdings Ltd., PCL Construction Holdings Ltd., PCL Constructors Inc., PCL Construction Resources Inc. and PCL Construction Group Inc. were added as responding parties in Board File No. 1801-94-R; and PCL Employees Holdings Ltd., PCL Construction Holdings Ltd., PCL Construction Resources Inc. and PCL Construction Group Inc. were added as responding parties in Board File No. 0484-94-R. In addition, the Operating Engineers withdrew its application as against PCL-Braun-Simmons Ltd.

## II

4. Section 1(4) of the *Labour Relations Act* provides that:

1.- (4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

Section 64 of the Act is commonly known as a "successor employer" or "sale of a business" provision. It applies to transactions involving the transfer of all or part of a business between two or more employer entities.

5. The Operating Engineers and the Iron Workers argued that there has been a sale of business from PCL Construction Limited to PCL Construction Group Inc., and subsequently a transfer of parts of a business from PCL Construction Group Inc. to PCL Construction Inc., PCL Constructors Eastern Inc., PCL Industrial Constructors Inc., and PCL Civil Constructors (Canada) Inc. They argued in the alternative that all the named responding parties carry on associated or related businesses or activities under common direction or control such that they constitute one employer for purposes of the Act.

6. The responding parties deny that there has been any sale of business from PCL Construction Limited to any of the PCL companies which operate in Ontario. They concede that there is common financial control and general direction of the operating companies through the PCL holding companies, which latter companies function to protect the interests of the shareholders, but they assert that the day to day direction of the operating companies is independent of both the holding companies and the general service company (PCL Constructors Inc.). The responding parties argue that the Board should not apply section 1(4) because the corporate structure of the PCL group of companies is not a product of labour relations "concerns" or of anti-union animus, there

is no evidence of any significant interference with the bargaining rights of either applicant trade union, applying the provision would create jurisdictional conflicts for the operating companies and make them “non-competitive”, the impact that a section 1(4) declaration could have on the national and international operations of the operating companies, and, in the case of the application in Board File No. 0484-94-R, because of the Iron Workers history of dealing with the operating companies, including the Iron Workers failure to assert bargaining rights.

### III

7. Both section 1(4) and section 64 operate to protect and preserve a trade union’s bargaining rights from being eliminated or eroded as a result of corporate restructuring or commercial transactions. As the Board put it in *Pinecrest-Queensway Health and Community Services*, [1992] OLRB Rep. Nov. 1211:

6. Section 1(4) applies to situations in which activities which generate employment relations governed by the *Labour Relations Act* are carried on through more than legal entity, whether or not at the same time. This provision gives the Board the power to pierce the corporate veil and declare two or more entities to constitute one employer for purposes of the Act where the Board is satisfied that they are engaged in associated or related activities under common direction or control. In that respect, section 1(4) modifies traditional common-law notions which are based upon the separation between legal entities and the privity of contract. It is a remedial provision intended to prevent the intentional or incidental frustration or erosion of established bargaining rights consequent upon changes in the structure or form of what is, for labour relations purposes, a single business or activity. To put it another way, whatever separation may exist between two or more entities for corporate, tax or other purposes, the Board is entitled to treat them as being one employer for labour relations purposes if they carry on associated or related activities under common control or direction. The purpose of section 1(4) is to protect the bargaining rights of a trade union and the rights of employees to bargain collectively with their employer through that trade union from being undermined by the form, or an alteration of the form, of a business or activity. In applications under section 1(4), the Board is concerned with the functional relationship between entities. Businesses or activities are “related” or “associated” because they are of the same character, serve the same general market, employ the same mode or the means of production, utilize similar employee skills, or are carried on for the benefit of related principals (see, for example, *Brant Erecting and Hoisting*, [1980] OLRB Rep. July 945 and October 1353). Where the Board is satisfied that two or more entities carry on associated or related activities or businesses under common control or direction, which may but does not necessarily include control over employees, the Board may declare that those entities constitute one employer for purposes of the *Labour Relations Act*. The effect of such a declaration is that the affected entities share the rights and obligations of an employer under the Act and any applicable collective agreement.

7. Section 64 has the same purpose and a similar effect. Like section 1(4), it recognizes that a “business” is a concept which does not lend itself to precise definition. Rather, a business is an economic activity (whether for profit or not) which can be conducted through a variety of legal vehicles or arrangements. It is the activity, not its form, which give rise to employee-employer relationships which are regulated by the Act and to which bargaining rights attach. Consequently, under the *Labour Relations Act*, bargaining rights attach to an activity as an employer rather than to a particular employer name or form of employer, and so long as that activity continues bargaining rights continue to exist. As in section 1(4), common-law or commercial law concepts have limited application to section 64 applications. Indeed it is those very concepts which led to the problems which the two provisions are intended to remedy.

8. The term “business” is not limited to a commercial or profit making activity. Sections 1(4) and 64 apply equally to traditional commercial activity and to municipalities, school boards, hospitals and other non-profit undertakings which have employees. It is the labour relations aspect of a “business” which is the focus of sections 1(4) and 64. In that respect, it is the continuity of the “activity” which is significant. “Business” is not necessarily synonymous with a particular group or kind of employees or the “work” they perform. Concomitantly, bargaining rights do not necessarily attach to particular work or employees. Although a continuity of work may be



significant, it is not always sufficient to justify a finding that two or more entities constitute one employer, or that there has been a sale of a business. The focus of the inquiry under both section 1(4) and section 64 is the total economic organization, not just the employees or the work performed (see *Metropolitan Parking Inc.*, [1979] OLRB Rep. Dec. 1193; *British American Bank Note Co.*, [1979] OLRB Rep. Feb. 72; *Kitchener-Waterloo Hospital*, [1991] OLRB Rep. Oct. 1130).

9. The purpose of sections 1(4) and 64 of the *Labour Relations Act* is to preserve established bargaining rights, not to extend them or to create bargaining rights where there were none. Further, though they apply to any business or activity, neither provision can be applied mechanically, particularly where the activities under scrutiny are not traditional commercial activities, or where there are parties involved other than the particular entities with respect to which an application has been made...

8. In sections 1(4) and 64 and the Board's jurisprudence, the focus is on trade union collective bargaining rights; and more specifically, on protecting a trade union's bargaining rights from being affected by corporate or commercial activities. Neither section 1(4) nor section 64 is an unfair labour practice provision. Both are concerned with the effects of business decisions or dealings on established bargaining rights, rather than with the motivation for such decisions or dealings. Sections 1(4) and 64 apply equally to commercial attempts to escape from bargaining rights and to *bona fide* business transactions which are not improperly motivated but which nevertheless erode established bargaining rights. As the Board pointed out in *KNK Limited*, [1991] OLRB Rep. Feb. 209, section 1(4) is not a penalty provision. Instead, it operates to allow the Board to deal with business transactions from a labour relations perspective without the constraints imposed by the rules of common or commercial law. The same is true of section 64.

9. Accordingly, it does not matter whether or not any of the business or corporate dealings which have brought the responding parties to where they are today were improperly motivated. Nor does it matter that applying either section 1(4) or section 64 might have impact on the operations of the responding parties or other PCL companies, whether those operations be in Ontario or elsewhere, or that doing so might create corporate jurisdictional problems. Sections 1(4) and 64 are concerned with protecting bargaining rights, not with the effect that bargaining rights or invoking sections 1(4) or 64 might have on the corporate entities involved. From the perspective of the *Labour Relations Act*, it is business dealings which result in a consideration of sections 1(4) or 64, and it would be inappropriate for the Board to consider the effect on those same dealings, or on the parties involved in them, of invoking these provisions as somehow mitigating the impact of those dealings on established bargaining rights. To suggest otherwise is a bit like saying that someone on a Toyota Tercel budget who chooses to buy a Rolls-Royce automobile should be left with the Rolls-Royce but only have to pay the cost of the Toyota Tercel because of the negative financial or other effects that person or others might suffer if s/he is required to pay the Rolls-Royce price. Further, the Act contains a mechanism specifically designed to deal with work assignment jurisdictional problems which the effected parties are unable to resolve between themselves. To the extent that a section 1(4) or section 64 declaration might result in some sort of inter-corporate jurisdictional problems, these are the consequences of the corporations' own conduct and are for them to resolve.

#### IV

10. The history of the "PCL family of companies", as they refer to themselves, begins with Poole Construction Limited, a large family owned general contractor which was based in western Canada. In or about 1977, the Poole family sold its interests in Poole Construction Limited to a group of its upper management personnel. This was accomplished through a share purchase transaction, pursuant to which the name of Poole Construction Limited was changed to PCL Construc-



tion Limited, in or about December 1978. On the evidence, PCL Construction Limited and Poole Construction Limited were the same company doing the same business under the same management, only under different ownership. PCL Industrial Constructors Ltd. and PCL Engineering Construction Ltd. were originally (differently named) wholly-owned subsidiaries of Poole Construction Limited. As a result of the share purchase of Poole Construction Limited, they became wholly owned subsidiaries of PCL Construction Limited. Each of these companies owned hard assets including land, buildings, equipment and tools until 1984, when a series of events resulted in a major corporate reorganization and restructuring.

11. For insurance, tax and other business reasons, primarily having to do with limiting potential liability after a 100 million dollar insurance claim arising out of a fire at a project involving PCL companies in Minneapolis, Minnesota, PCL Industrial Constructors Ltd. became PCL Industrial Constructors Inc. The latter (Inc.) carried on the same business as the former (Ltd.). Several new PCL companies were also incorporated, including PCL Constructors Eastern Inc. At the same time, the hard assets owned by PCL Construction Limited, PCL Industrial Constructors Limited and PCL Engineering Construction Ltd. were sold by them to PCL Construction Resources Inc., which it appears was incorporated for that purpose.

12. In addition, PCL Construction Limited sold all of the shares of PCL Industrial Constructors Inc. and PCL Engineering Construction Ltd. to PCL Construction Group Inc., which also appears to have been incorporated for the purpose of owning, as it still does, the PCL operating companies.

13. This 1984 corporate reorganization was orchestrated by the combined management of PCL Construction Limited, PCL Industrial Constructors Ltd. and PCL Engineering Construction Ltd. For income tax purposes, the Board of Directors of PCL Construction Group Inc. decided that central services provided to the operating company should be reorganized as well and PCL Constructors Inc. was created for that purpose. This was another attempt to limit potential liability and exposure to risk. In the result, all of the operating companies, but apparently not PCL Construction Resources Inc. were wholly-owned subsidiaries of PCL Construction Group Inc., but the hard assets were (as they are today) all held by PCL Construction Resources Inc., thereby separating the assets from potential liability.

14. Also in 1984, PCL Construction Limited stopped bidding on new work and essentially discontinued its operations in Ontario. Between 1984 and 1987, PCL Construction Limited completed its existing contracts and was wound down. This was done as part of the overall corporate strategy to "cut off the long tail of liability" with respect to previously completed work. By means of an arms-length share purchase transaction which closed on or about October 1, 1987, PCL Construction Limited was sold to Ocelot Industries Ltd. and its name was changed to 18127 Alberta Ltd. All of the decisions in this respect were made by PCL Construction Group Inc. In essence, this was an income tax transaction which benefited both the purchaser and the seller.

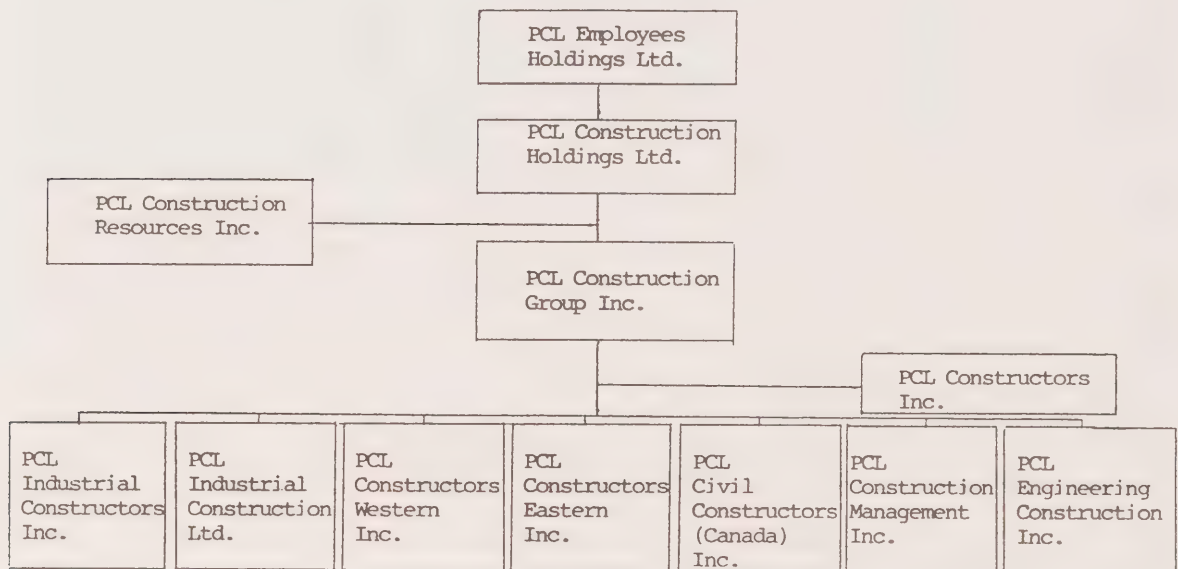
15. PCL Civil Constructors (Canada) Inc. has its roots in Eastbrook Sand & Gravel, which was wholly owned by Poole Construction Limited until the purchase and change of name of the latter to PCL Construction Limited. It was renamed PCL Road Constructors Inc. in 1984, then to PCL Civil Constructors Inc. in 1986, and finally to its present name of PCL Civil Constructors (Canada) Inc. in 1989. As part of the corporate reorganization in 1984, the shares of this company were sold to PCL Construction Group Inc.

16. PCL Constructors Inc. is wholly owned by PCL Construction Group Inc., which is in turn wholly owned by PCL Construction Holdings Inc. PCL Construction Resources Inc. is also a wholly owned subsidiary of PCL Construction Holdings Ltd. Originally, PCL Construction Hold-

ings Ltd. was created in order to provide a shareholding vehicle for the interest held in the PCL companies by Great-West Life Assurance Company, which interest that insurance company no longer holds.

17. At the pinnacle of the PCL corporate structure is PCL Employees Holdings Inc. This company is a shareholding vehicle for approximately 700 individual shareholders, all of whom are employees of a PCL company. PCL Employees Holdings Ltd. owns 100 per cent of PCL Construction Holdings Ltd. accordingly, PCL Employees Holdings Inc. wholly owns all of the PCL companies with which we are concerned in this case. (We note that the responding parties filed a "PCL family of companies corporate structure chart" dated October 1994 (exhibit 2a) which shows PCL Employees Holdings Ltd. as the ultimate 100 per cent owner of some 30 corporations, and with significant interests in several others, in Canada, the United States and Mexico.) On the evidence, in 1993 the construction work performed by the PCL family of companies had an approximate value of \$1,342,000,000.00 dollars. Of this, 10 to 15 per cent was in Ontario, 33 to 35 per cent in the rest of Canada and the rest in the United States.

18. In the result, for purposes of this case, we have PCL Employees Holdings Ltd., a holding company which owns another holding company, PCL Construction Holdings Ltd., which owns PCL Construction Resources Inc. and PCL Construction Inc. which latter company owns PCL Constructors Inc., a central service company which supplies the following Canadian operating companies which PCL Construction Group Inc. also owns: PCL Industrial Constructors Inc., PCL Industrial Construction Ltd., PCL Constructors Western Inc., PCL Constructors Eastern Inc., PCL Civil Constructors (Canada) Inc., PCL Construction Management Inc. and PCL Engineering Construction Inc. That is:



19. As the responding parties point out, each operating company has its own market by area and type of construction work, and each operating company directly employs its own construction tradesmen in the field. It also appears that what the responding parties themselves refer to as "PCL's senior management group" in Edmonton, Alberta is composed of seven persons who do not have the time to offer more than general direction to approximately 30 corporate entities in the PCL family of companies, and that the operating companies manage and direct their own day to day affairs. There are also other indications that the operating companies are independent. On the whole, however, the evidence, including the nomenclature used and publications produced by the responding parties themselves, strongly suggest that that is not the case. On the contrary, we are satisfied on the evidence before the Board that for labour relations purposes, and specifically for purposes of the *Labour Relations Act*, the various PCL companies herein constitute a single employer. In that respect, and as the label itself suggests, the various PCL operating companies act very much as the arms and legs of and for the benefit and bidding of the heart and brains (PCL Construction Group Inc., PCL Construction Holdings Ltd. and PCL Employees Holdings Ltd.) of a single business.

## V

20. The fact is that the overall corporate goals, directions, and market areas and strategy for all PCL companies are all established centrally. There is substantial overlap between the directors and officers of the various PCL companies, which directors are appointed centrally by the directors of PCL Construction Group Inc.; there is a core group of employees (referred to as "designated employees") who may be nominally identified as employees of individual operating companies but who, on the evidence, are in reality employees of the "PCL family of companies"; many significant human resources and labour relations, construction and operations services and resources are provided centrally; the overall operations of the operating companies are co-ordinated centrally; and the very continued operation or existence of each of the operating companies is subject to the wishes of PCL Construction Holdings Ltd., which is itself wholly owned and directed by and for the benefit of PCL Employees Holdings Ltd. and its PCL employee shareholders.

21. Some of the corporate and commercial facts material to these applications were not disputed. Consequently, *viva voce* evidence was not required to establish those facts. However, the Board heard the *viva voce* evidence of two witnesses called by the responding parties to explain, supplement and expand upon the undisputed facts: Michael Necula, who identified himself as the Manager of Labour Relations for PCL Constructors Inc. and for PCL Constructors Eastern Inc. (and who also acted as the advisor to counsel for all the responding parties in this proceeding); and Gordon Maron, who identified himself as the Vice-President of Finance of PCL Constructors Inc. The interesting thing about this is that these persons, who we found to be quite credible witnesses, demonstrated an intimate and detailed knowledge of the structure and affairs of all the PCL companies with which we are concerned in this case. This also suggests a strongly centralized control. The Board also heard the evidence of two witnesses called by the applicants with respect to the bargaining rights issues.

22. We have already described the development and current state of the PCL corporate structure (see paragraph 18 above). Turning now to the Boards' of Directors of the PCL companies, we note first that there is an overlap between the Boards of Directors of PCL Constructors Eastern Inc., PCL Industrial Construction Ltd., PCL Constructors Inc., and PCL Constructors Group Inc. in the person of Ross Grieve. A publication called "Horizons" is produced for what is identified as the "PCL family of companies", a label which appears often in the evidence. Issue 37. Summer 1994 of Horizons contains a page titled "Chief Operating Officers" and subtitled "Execu-



tive Appointments” in which Mr. Grieve’s is identified as a civil engineer who “joined the PCL companies over 25 years ago...”, traces his history with the PCL operations and identifies him as being “...Chief Operating Officer of PCL’s Canadian operations... responsible for all PCL building activities in Canada. He continues to have corporate responsibilities for PCL’s civil operations in Canada and the United States. As well, Peter Beaupré, Senior Vice-President, reports to Ross [Grieve] on our Mexican and offshore initiatives.” Mr. Grieve is then quoted as saying:

“I see PCL’s future to be incredibly bright,” says Ross. “Our diversification into virtually all sectors of the construction industry combined with our wide spread geographical coverage and a highly talented, youthful management team positions us well for the future.”

23. There is also an overlap between the Boards of Directors of PCL Civil Constructors (Canada) Inc. and PCL Construction Group Inc. in the person of J. D. Thompson, who also happens to be the CEO of PCL Employees Holdings Ltd.

24. Accordingly, Messrs. Grieve and Thompson provide a direct link and overlap, through PCL Construction Group Inc., between the PCL Canadian operating companies with which we are concerned and the holding companies.

25. Further, the directors of PCL Constructors Inc. and of all the operating companies have always been appointed by the Board of Directors of PCL Construction Group Inc. In each case, these appointed directors (who sometimes are the directors of PCL Construction Group Inc. as well) are responsible for representing the interests of the shareholders of PCL Construction Group Inc.; namely, the PCL employees who are the shareholders of PCL Employees Holdings Ltd. (which is the sole owner of PCL Construction Group Inc.). With this responsibility in mind, these directors “advise” the management of each operating company.

26. The evidence before the Board only reveals the identity of the directors of PCL Constructors Eastern Inc., PCL Industrial Constructors Inc., PCL Civil Constructors (Canada) Inc., PCL Constructors Inc. and PCL Construction Group Inc. At least one of the directors of each of the first four is also a director of PCL Construction Group Inc. and all of the directors of the operating companies are appointed by PCL Construction Group Inc. Having regard to all the evidence before the Board, it seems more probable than not that the same is true for all of the PCL Canadian operating companies, including all the ones with which we are concerned in this application. In addition, there is an overlap between the officers of the various PCL companies. For example, at least one of the officers of each of PCL Constructors Eastern Inc., PCL Industrial Constructors Inc. and PCL Civil Constructors (Canada) Inc. is also an officer of PCL Constructors Inc., which the evidence reveals is in effect a central service provider for the operating companies in Canada. In the case of PCL Construction Group Inc. which owns both PCL Constructors Inc. and all of the Canadian operating companies, all four of its officers are also officers of PCL Constructors Inc. Similarly, the evidence indicates that there is an overlap among the other management and officers of the various companies, and that most if not all such persons are also what are known as “designated employees” of PCL Constructors Inc.

27. The offices of PCL Constructors Inc., PCL Construction Management Inc., PCL Construction Resources Inc., PCL Civil Constructors (Canada) Inc., and PCL Industrial Constructors Inc. are all located within very close proximity on 99th Street in Edmonton, Alberta. PCL companies which have more regional interests, like PCL Eastern Constructors Inc. for example, have offices within their target market regions, which is what one would expect.

28. The PCL family of companies has been divided up both geographically and by construction specialty. However, the evidence also reveals that the dividing lines between the areas of

responsibility are rather flexible. Further, these lines are drawn by and subject to the wishes of the control and overall authority of PCL Construction Group Inc. where general corporate strategy is developed and through which earnings not retained in an operating company are channelled through to PCL Employees Holdings Inc. In addition, while the operating companies, either alone or in combination through what was described as internal joint ventures, carry out the actual construction projects, they do so with significant central support co-ordinated through PCL Construction Resources Inc. and PCL Constructors Inc.

29. As we have already noted (see paragraphs 11 and 13, above), PCL Construction Resources Inc. is the nominal legal owner of all PCL capital assets, including land, buildings, vehicles and equipment. These assets are "leased" to the PCL operating companies. It is not apparent that PCL Construction Resources Inc. leases anything to anyone other than other PCL companies, although PCL operating companies do sometimes lease from third parties. The PCL operating companies generally own small tools and equipment with a total value of less than \$500.00. This arrangement allows for an efficient use of resources and also separates the assets from potential operating liability.

30. PCL Constructors Inc. provides a significant number of other centralized services to the PCL operating companies, which are known as PCL client companies (and again it does not appear that it has any non-PCL "clients"). These include accounting and bookkeeping services (including payroll and payroll cheques, and benefits administration); business systems and computing services; quality control, engineering and design, estimating, and construction technologies services; safety and accident prevention advice and training, human resources and labour relations expertise, advice and assistance; and remitting field dues to the trade unions as required. PCL Constructors Inc. also does a consolidation of the PCL operating companies financial reports for presentation to the parent companies.

31. With respect to the central human resources and labour relations expertise or functions provided by PCL Constructors Inc., Mr. Necula testified that he provides advice and consultation in labour relations matters, and it is apparent that he is involved in grievances, collective agreement administration, jurisdictional concerns with the various construction trades and Labour Board matters to and on behalf of all PCL operating companies. In addition, the evidence includes a letter dated July 19, 1994 signed by Mr. Necula in response to an Operating Engineers grievance against PCL Constructors Inc. at the Shekak River Project near Hearst, Ontario. This letter appears to be a response on behalf of both PCL Constructors Inc. and PCL Civil Constructors (Canada) Inc., and also refers to PCL Constructions Eastern Inc. as follows:

For your information, PCL Constructors Inc. is not an employer or operating company within the Province of Ontario. The operating company within the PCL family of companies, which has the contract to perform the heavy engineering construction work on the Shekak River Project in Ontario, is PCL Civil Constructors (Canada) Inc.

My instructions on behalf of PCL Civil Constructors (Canada) Inc. are to deny any violation of your Union's Collective Agreement and to further inform you that their company is not party to your Province-wide agreement. In addition, PCL Civil Constructors (Canada) Inc. reserves the right to object to the arbitrability of this matter.

As you may be aware, PCL Constructors Eastern Inc. is a party to your Operating Engineer Local 793 Provincial Collective Agreement but only for the Industrial/Commercial and Institutional (ICI) sector of the Construction Industry in Ontario.

32. PCL Constructors Inc. also plays a general consulting and co-ordinating role with a view to ensuring that the individual PCL operating companies conduct themselves in a manner consistent with the overall corporate strategy and objectives developed by PCL Construction Holdings



Ltd. Something called the "PCL College of Construction", which operates various management and special skills programs for personnel associated with all PCL operating companies, is also operated centrally, probably by or through PCL Constructors Inc.

33. Similarly, the PCL operating companies set their own financial targets but these are subject to the corporate strategy and goals set by PCL Construction Holdings Ltd. The individual operating companies do their own subcontracting but do so in accordance with and on a standard form referred to generally as a "PCL Subcontract" and containing the same general provisions and "boiler plate" contract language. As Mr. Necula put it, the standard format is used to ensure that all PCL subcontracts contain the proper provisions. Naturally, the particulars of each subcontract differ according to the nature and requirements of each situation. However, we find the similarities to be more telling than the differences.

34. The individual operating companies acquire their own performance bonds or letters of credit, but these are all based on the strength of the PCL family of companies as a whole, and not on what the individual company has to offer. After all, the assets of the PCL family of companies have been separated from the operating companies. In effect, for bonding and credit purposes, PCL Construction Group Inc. gives the bonding company an indemnity based on its equity in all the operating companies and PCL Construction Resources Inc.

35. The PCL family of companies has two groups of employees: one group consists of employees of the "PCL family of companies". These are known as "designated employees". The other group consists of employees of the individual PCL operating companies.

36. There are approximately 575 to 600 designated employees spread across the various PCL companies. In effect, these are the PCL core managerial and staff employees. The concept of the designated employee was developed in or about 1987 as a way of dealing with the confusion and problems which had developed in employment and benefits administration in circumstances where PCL employees moved from one PCL company to another by being "fired" by one and immediately "re-hired" by the other. It was also intended to provide a means which was mutually beneficial to the PCL family of companies and its core employees of providing such employees with better opportunities for career growth and management succession.

37. The evidence of Messrs. Necula and Maron reveals that designated employees, all of whom are non-union, are in effect PCL staff employees, regardless of the PCL corporate entity for which they are nominally working. A designated employee may be recruited by either PCL Constructors Inc. or by a PCL operating company. In either case, they are placed on the payroll and benefit plans of PCL Constructors Inc. for payroll, pension and benefits administration purposes, all designated employees are employed by PCL Constructors Inc., and, except for designated employees who work directly for PCL Constructors Inc. (including the senior managers of PCL's overall operation, such as its Chief Engineer, Vice-President of Business Development, Vice-President of Finance [Mr. Maron] and Vice-President Computer Systems) are then assigned to a PCL operating company pursuant to the service contract the operating company has with PCL Constructors Inc. PCL Constructors Inc. then charges the operating company for the services of the designated employees. Designated employees are paid salaries within the range established for their classifications by PCL Constructors Inc. (subject to some limited discretion which the operating companies have to pay individuals more, though it is more probable than not that even this must be approved by PCL Constructors Inc.). Designated employees participate in the same pension and benefit plans (subject to some minor differences to accommodate individual circumstances) in accordance with their classification and years of service with *any* PCL company. The day to day employment of designated employees is controlled and directed by the operating com-



pany to which they are assigned. There was some suggestion that the individual companies have the power to hire and fire designated employees but we are satisfied that this is primarily a book-keeping matter which accommodates the transfers of designated employees (of which there are 20 or so each year) between PCL companies, since it is PCL Constructors Inc. which controls and oversees all of the human resources functions (including issuing T-4 slips for income tax purposes, dealing with personnel requests, requests for relocation to the United States and employment policy matters in addition to payroll and benefits administration), and PCL Constructors Inc. is the actual employer of designated employees. Service, benefits and pension credits are all transferable between PCL companies.

38. The second group of employees consists primarily of what might be referred to as field employees. These are the employees who performed the actual construction work; that is, who "work with the tools", and the foremen and some of the construction superintendents who supervise their work. This seems to be a natural extension of the PCL structure which divides up operating companies by geographic area and type of construction, thereby creating different manpower needs. As a general matter, there is no interchange of construction field employees, partly because of the way in which applicable collective agreements operate, and partly because of the nature of the construction projects and the needs of the individual operating companies. However, even for field employees, service is transferable in much the same way as it is for designated employees. For example, the PCL "Horizons" publication Issue 37 Summer 1994 refers to laborers [sic], a crane operator, a labor [sic] foreman and to project superintendents, with various PCL companies, as new members to the PCL "Quarter Century Club". Not only is there a single such "club" for all PCL companies as a group, but *none* of the PCL companies have existed as such for that long. Similarly, as the section titled "Did You Know?" on the second last page of this Horizons' issue indicates, there are 83 PCL employees, undifferentiated by an individual company, listed as having 20 or more years of service with PCL as of May 1994, again longer than any PCL company has existed.

39. Accordingly, as a practical matter, a person may work for an individual PCL company at any given time, but his/her employment is really with the whole PCL family of companies.

40. In reality, the PCL family of companies takes a co-ordinated and unified approach to business and employment. That is also how it presents itself to the world, through its own promotional material.

41. Each PCL operating company has its own promotional brochure. What is most striking about these are the similarities between them. There are differences, of course, particularly in the brochure for PCL Industrial Constructors Inc. (which is no longer operating in Ontario), but the colour scheme, format and style, and the contents are substantially the same. The overall presentation leaves one with the impression that the various PCL operating vehicles are part of one big company. This is hardly surprising because even though the material is ostensibly prepared under the direction of each individual operating company, this is done with the "assistance" of "head office", for the express purpose of maintaining quality and consistency in approach.

42. In the result, each operating company's brochure has a picture of a PCL project on the cover page with a solid green border at the top and the distinctive PCL yellow logo in the upper right hand corner. With the exception of PCL Pacific Inc., there is no mention or identification of the individual operating company until the last page. Except for PCL Industrial Construction Ltd., each brochure begins with a reference to PCL and then to the city or region out of which the operating company operates. Except for PCL Industrial Construction Ltd. and PCL Civil Constructors (Canada) Inc., each has a section subtitled "what sets *PCL* apart from other contractors?" with

substantially the same points listed underneath. Even PCL Civil Constructors (Canada) Inc.'s brochure makes substantially the same points in the same place but presents them in a slightly different format. Each also contains the pictures and short biographies of the particular operating companies "key personnel" and presents pictures of various projects it has been involved in. Even PCL Industrial Constructors Inc.'s brochure follows the same general format and presents the same kind of information.

## VI

43. In the result, the "PCL family of companies" operates and presents itself as a single large business made up of complimentary components, which components are structured in a way which is designed to maximize business efficiency while offering a structured damage control in the form of reduced tax and liability exposure. There is a strongly centralized structure which provides physical and management resources, including personnel, and a strong central direction. What local or individual autonomy there is is structured and is essential to the successful operation of such a large enterprise. The business is simply too large for the central control to extend to the daily operations of each operating company. What began still begins in the centre also comes back to it so that in the end the PCL business is operated by and for the benefit of the 700 odd shareholders of PCL Employees Holdings Ltd. What PCL has done, for very good business reasons, is constructed a series of corporate veils designed to maximize efficiency and return on investment at the least exposure to risk. This is precisely the kind of corporate structuring which sections 1(4) and 64 of the Act are intended to permit the Board to cut through in order to protect established bargaining rights.

44. It is clear that the "PCL family of companies" is under common ownership and control, and is under common overall management, has many important functions highly centralized (including human resources and labour relations). The operations of the various PCL entities are fully integrated, and the PCL family of companies operates and presents itself as a single business enterprise, and carries on business with a common purpose and for the benefit of those who own and control it. The responding parties (except for 18127 Alberta Limited) are corporate parts of a single construction business activity.

45. It is also readily apparent that the purchase of Poole Construction Limited by PCL Construction Limited constitutes a sale of a business within the meaning of section 64 of the Act. PCL Construction Limited was effectively the same company carrying on the same business under the same management, only under a different name and ownership. What subsequently became PCL Industrial Constructors Ltd. and PCL Engineering Construction Ltd. were part of the same sale. The subsequent corporate reorganization of the PCL business in 1984 dispersed that business among the various PCL corporate entities in an attempt to limit and compartmentalize exposure to various liabilities. Since then, each PCL compartment is operated as a severable cohesive business unit, but each is equally clearly a part of the single PCL business. Although the PCL field operations appendages enjoy certain autonomy, it is within parameters established and controlled centrally by PCL Construction Group Inc. directly, and indirectly, through the interconnected Boards of Directors and Officers, and centralized services, including human resources and labour relations functions, provided to the operating companies by PCL Constructors Inc. In addition, the assets of the PCL business are held in PCL Construction Resources Inc. Accordingly, the 1984 corporate restructuring amounted to a transfer of parts of the PCL business to the various new PCL entities and also constitutes a sale of business within the meaning of section 64 of the Act.

## VII

46. Among the reasons offered by the responding parties for their submission that these



applications should be dismissed were their assertions that, particularly with respect to the Iron Workers, the applicants had abandoned their bargaining rights, or had unduly delayed in asserting their bargaining rights, or should be estopped from asserting their bargaining rights.

47. That bargaining rights can be abandoned by a trade union is a well established concept in the Board's jurisprudence, and the Board's approach in that respect has been accepted by the courts (see, for example, *Re Carpenters District Council and Hugh Murray, (1974) Ltd.*, (1980), 33 O.R. (2d) 670 (Divisional Court) dismissing an application for judicial review of the Board's decision in *Hugh Murray Limited*, [1979] OLRB Rep. July 664 and in another, similar case). That is, bargaining rights can be extinguished by the unilateral voluntary abandonment of those rights. Whether or not a trade union has abandoned bargaining rights is a question of fact. To establish abandonment, the Board requires that there be unequivocal evidence that the trade union has walked away from the bargaining rights in question. In determining whether bargaining rights have been abandoned, the Board will consider the length of time during which a trade union was inactive with respect to those rights, its attempts to negotiate or renew collective agreements in that respect, its administration or enforcement of its bargaining rights in any applicable collective agreement, and any other relevant factors which may be peculiar to the case before the Board.

48. As a general matter, it is not very easy to prove abandonment. It is even more difficult in the industrial, commercial and institutional ("ICI") sector of the construction industry. In *Lorne's Electric*, [1987] OLRB Rep. Nov. 1405, the Board described why it is difficult to establish that an affiliated bargaining agent (which both of the applicants are) has abandoned ICI sector bargaining rights under the provincial bargaining scheme established under the Act for that sector. Subsequent decisions have demonstrated the Board's willingness to give serious consideration to assertions that construction industry bargaining rights, including bargaining rights in the ICI sector, have been abandoned, but also serve to underline how difficult it can be to establish abandonment, particularly in the ICI sector (see, for example, *Toronto-Dominion Bank*, [1995] OLRB Rep. May 686, *The Hudson's Bay Company*, [1993] OLRB Rep. June 563, *Marineland of Canada Inc.*, [1990] OLRB Rep. Dec. 1298.

49. In cases in which abandonment is asserted, one will also often find an argument that the Board should take into account a trade union's delay in pursuing the particular application, or that the trade union is estopped from enforcing some or all of its bargaining rights or collective agreement in that respect.

50. Until 1991, the Board considered "delay" as a factor in section 1(4) proceedings by injecting a kind "fault" notion which required a trade union to act with due diligence in pursuing and enforcing collective agreement and bargaining rights generally, and specifically in pursuing a section 1(4) application. That is, where a trade union delayed unduly in bringing such an application in circumstances where it knew or ought to have known of the facts material to its application, and particularly the alleged erosion of its bargaining rights, the Board would exercise its discretion under section 1(4) (a discretion the Board appears not to have under section 64) to dismiss the application.

51. However, in *KNK Limited, supra*, a decision with which we respectfully agree, and which the Board has consistently followed, the Board concluded that where the legal requirements for a section 1(4) declaration and the mischief which the provision is directed at have been established, a declaration should issue unless there is some labour relations prejudice or compelling labour relations policy reason which makes such a declaration inappropriate in a particular case. Accordingly, the Board will not dismiss a section 1(4) application on the basis of a trade union's



delay except in exceptional circumstances when it is clearly appropriate to do so, and where there is no other alternative.

52. In effect then, the Board will not dismiss a section 1(4) application because of a trade union's conduct unless the Board is satisfied that that conduct amounts to an abandonment of bargaining rights. However, the Board will adjust the effective date or circumstances on or in which the declaration will be effective, in order to balance the relevant applicable labour relations interests and circumstances which fall short of justifying dismissal but which call for some adjustment. Delay and estoppel, which are overlapping concepts, are two of the factors which the Board will consider in that respect.

53. In *Toronto-Dominion Bank, supra*, the Board described the difference between abandonment and estoppel. Estoppel is a well-established equitable concept which has been applied by statutory administrative tribunals, including this Board, in circumstances where it would be "unfair" to permit a party to enforce its strict legal rights because of representations it has made to the party against which it seeks to enforce those rights, and upon which representations the latter has relied to its detriment.

54. In this case, the evidence reveals that Poole Construction Limited entered into a voluntary recognition agreement with Iron Workers Local 759 (the Thunder Bay Local) on or about January 8, 1973. Pursuant to this voluntary recognition agreement, Poole agreed to be bound by the collective agreement between Local 759 and the Thunder Bay Construction Association in an area of Northwestern Ontario which includes what have since been established as Board Areas 22, 23, 24 and 25. The Thunder Bay Construction Association collective agreement in effect at the time predates provincial bargaining in the ICI sector, and is not limited to any particular sector(s) of the construction industry. Subsequently, pursuant to a certificate of accreditation issued to the Ontario Erectors Association with respect to the Iron Workers Local 759, Poole Construction Limited became one of the employers for which the Ontario Erectors Association held bargaining rights in the same geographic area in the ICI and the heavy engineering sectors of the construction industry. There is no cogent evidence that any part of these bargaining rights were abandoned either prior to the sale of Poole Construction Limited to PCL Construction Limited, the introduction of provincial bargaining in the ICI sector, or the corporate restructuring of the PCL business. Accordingly, these bargaining rights flowed through to the various PCL entities. Further, Poole Construction Limited also became bound to the collective agreement between the Ontario Erectors Association and Iron Workers Locals 700, 721, 736, 759, 765 and 786 prior to the sale of the PCL Construction Limited and provincial bargaining. There is no cogent evidence that any of these bargaining rights were abandoned either, and they too flowed through the various PCL entities. Indeed, on the responding parties own evidence, the Iron Workers hold bargaining rights for iron workers employed by PCL Industrial Constructors Inc. in the ICI sector. In that respect, PCL Industrial Constructors Inc. became a member of the Ontario Erectors Association in 1986.

55. The responding parties have also conceded that the agreement between the Operating Engineers and the Toronto Construction Association prior to 1978 covered the ICI sector, and arguably covered the heavy engineering sector in what is now Board Area 8. In addition, in a section 126 construction industry arbitration proceeding in Board File No. 1603-92-G, PCL Constructors Eastern Inc. agreed that it is bound by the Operating Engineers' Provincial Agreement for the ICI sector. We note that the Letter of Understanding in that respect was signed on behalf of PCL Constructors Eastern Inc. by Mr. Necula. Similarly, the evidence includes a Memorandum of Agreement dated December 15, 1986 between PCL Industrial Constructors Inc. and the Operating Engineers in which PCL Industrial Constructors Inc. agreed to be bound to the Operating Engineers Provincial Agreement in the ICI sector. Accordingly, the Board is satisfied that as recently

as March 1993, PCL Constructors Eastern Inc. has conceded that the Operating Engineers hold ICI bargaining rights for its employees in that trade.

56. Having regard to our conclusions that the responding parties constitute a single employer within the meaning of section 1(4) and purposes of the *Labour Relations Act*, and that there has been a sale of a business first from Poole Construction Limited to PCL Construction Limited and then from PCL Construction Limited to PCL Construction Group Inc. and the rest of the responding parties, we find it unnecessary to deal further into the bargaining rights question (indeed, on the evidence before the Board it would be difficult to do so).

57. Further, the Board is satisfied that no bargaining rights which either applicant has obtained with respect to the PCL family of companies, either directly or through Poole Construction Limited have been abandoned or otherwise extinguished.

58. The evidence does reveal some inconsistencies in the Iron Workers approach to bargaining rights with the various PCL entities. In that respect, PCL Constructors Eastern Inc. has used non-union subcontractors in Ontario (something which is inconsistent with the Iron Workers provincial ICI Agreement) and there has been some lack of enforcement, by Local 765 for example, of bargaining rights. In addition, there is correspondence from 1990 with respect to a construction grievance proceeding before the Board to the effect that Iron Workers Local 721 agreed that PCL Constructors Eastern Inc. did not have a collective bargaining relationship with that Local. However, it is also apparent that PCL Constructors Eastern Inc. has used many union subcontractors; indeed, probably more union than non-union subcontractors, and that Iron Workers Local 759 in Thunder Bay has quite consistently sought to enforce the Iron Workers bargaining rights with any PCL entity. Iron Workers Local 721 has also sought to enforce bargaining rights in Toronto. In that respect, the 1990 correspondence is anomalous, appears to reflect positions taken with a narrow view of the question having regard to the particular proceedings, and is clearly wrong, even on the evidence of the responding parties in this case. This and the other apparent inconsistencies in the approach of the Iron Workers union as a whole to its bargaining rights with the PCL family of companies indicates some confusion within the Iron Workers in that respect, but does not suggest any voluntary abandonment of bargaining rights. Taken as a whole, the evidence falls far short of establishing abandonment. Indeed, there is no cogent evidence that either of the Iron Workers or Operating Engineers have voluntarily given up any bargaining rights with any PCL entity. On the contrary, the evidence indicates that both applicants have pursued these bargaining rights albeit somewhat irregularly.

59. Further, unlike in the *Toronto-Dominion Bank*, *supra*, case, the Board is not satisfied that either applicant has made any representation that it would not enforce its bargaining rights to any PCL entity, either by word or by conduct, which was intended to be or which was relied upon by any PCL entity to its or the PCL family of companies' detriment. To the extent that the January 1990 correspondence referred to in the preceding paragraph could be taken as such a representation by the Iron Workers, there is nothing in the evidence which indicates that PCL Constructors Eastern Inc. relied upon to its detriment. In fact, subsequent events, as demonstrated by the evidence before the Board in these proceedings, suggests that it did not.

### VIII

60. The mischief which sections 1(4) and 64 are directed against is manifest in this case. The responding parties (quite rightly given the evidence) conceded that the Operating Engineers bargaining rights could be eroded if the declarations were not granted. In our view, it is more probable than not that that would be the result. For example, for the Valerie Falls Project, PCL Constructors Eastern Inc. bid the job and the contract is in its name. However, PCL Civil Constructors



(Canada) Inc. actually managed the project and PCL Constructors Eastern Inc.'s personnel were not involved. In doing so, PCL Civil Constructors (Canada) Inc. borrowed and availed itself of PCL Constructors Eastern Inc.'s collective bargaining relationship with the Operating Engineers. The Shekak River Project dispute between the parties is another example where the potential for erosion of bargaining rights is clear. Similarly, the Thunder Bay Airport and Sears Store jobs demonstrate the danger to the Iron Workers' bargaining rights.

61. PCL Industrial Constructors Inc. and PCL Constructors Eastern Inc. have both operated in the ICI sector in Ontario. PCL Constructors Eastern Inc. filled the PCL void when it was decided, centrally, that PCL Industrial Constructors Inc. would cease its Ontario operations. PCL Constructors Eastern Inc. and PCL Civil Constructors (Canada) Inc. have jointly bid on projects in Ontario in the Ottawa area. PCL Constructors Prairie Inc., although not a responding party in this case, has in effect taken over PCL Constructors Eastern Inc.'s territory in Northwestern Ontario (including Thunder Bay).

62. Finally, the lines of demarcation between the operations of the various PCL entities which have a direct presence in Ontario overlap and are flexible. They are also subject to change at any time but the central management resident in PCL Employees Holdings Ltd., PCL Construction Holdings Ltd. and PCL Construction Group Inc. either directly or through the central service company PCL Constructors Inc. The Board is also satisfied that PCL Construction Resources Inc. should be included because it has a presence, albeit an indirect one, in Ontario. To the extent that it or any other responding party does not, it will not be effected. The Board's jurisdiction is limited to Ontario.

## IX

63. In the result, both of these applications are allowed. However, even the applicants submitted that the declaration should only be effective March 2, 1994. The responding parties argued that if declarations did issue they should be limited in scope and only be effective from the date of this decision. In the circumstances of this case, the Board finds that neither of the suggested results is appropriate. We are satisfied that the declaration should include all of the responding parties to the extent that they operate, directly or indirectly in Ontario, that the declaration be effective May 11, 1994, the date that the first section 1(4)/64 application herein was filed, but that any projects which any responding party had contracted to perform but which was not completed prior to May 11, 1994 is exempt from that declaration.

63. The Board therefor declares that:

- a) PCL Employees Holdings Ltd., PCL Construction Holdings Ltd., PCL Construction Resources Inc., PCL Construction Group Inc., PCL Constructors Inc., PCL Industrial Constructors Inc., PCL Industrial Construction Ltd., PCL Constructors Western Inc., PCL Constructors Eastern Inc., PCL Civil Constructors (Canada) Inc., PCL Construction Management Inc. and PCL Engineering Construction Inc. constitute a single employer within the meaning of section 1(4) of the *Labour Relations Act*;
- b) That there has been a sale of a business from PCL Construction Limited to PCL Construction Group Inc., and subsequently a sale of a business in the form of a transfer of parts of a business from PCL Construction Group Inc. to PCL Constructors Inc., PCL Construc-



tors Eastern Inc., PCL Industrial Constructors Inc. and PCL Civil Constructors (Canada) Inc.;

- c) That PCL Employees Holdings Ltd., PCL Construction Holdings Ltd., PCL Construction Resources Inc., PCL Construction Group Inc., PCL Constructors Inc., PCL Industrial Constructors Inc., PCL Industrial Construction Ltd., PCL Constructors Western Inc., PCL Constructors Eastern Inc., PCL Civil Constructors (Canada) Inc., PCL Construction Management Inc. and PCL Engineering Construction Inc. are bound by the collective agreement between the Ontario Erectors Association, Incorporated et al and the International Association of Bridge, Structural and Ornamental Iron Workers et al;
- d) That PCL Employees Holdings Ltd., PCL Construction Holdings Ltd., PCL Construction Resources Inc., PCL Construction Group Inc., PCL Constructors Inc., PCL Industrial Constructors Inc., PCL Industrial Construction Ltd., PCL Constructors Western Inc., PCL Constructors Eastern Inc., PCL Civil Constructors (Canada) Inc., PCL Construction Management Inc. and PCL Engineering Construction Inc. are bound by the collective agreement between the Operating Engineers Employer and Employee Bargaining Agencies effective from May 1, 1992 to April 30, 1995;
- e) The aforesaid declarations are effective May 11, 1994;
- f) Any projects which any employer party effected by the declarations herein contracted to perform but which was not completed prior to May 11, 1994 is exempt from these declarations.

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**3616-94-R; 3824-94-R; 0778-95-R** Great War Memorial Hospital of Perth District, Applicant v. Ontario Public Service Employees Union, Responding Party v. Ontario Nurses' Association, Intervenor #1 v. Association of Allied Health Professionals: Ontario, Intervenor #2; Great War Memorial Hospital of Perth District, Smiths Falls Community Hospital, Applicants v. Ontario Public Service Employees Union, Canadian Union of Public Employees, Local 2119, Independent Canadian Transit Union and its Local 6, Ontario Nurses' Association, Responding Parties v. Non-Union Employees Smiths Falls Community Hospital and The Great War Memorial Hospital, Intervenor #1 v. Association of Allied Health Professionals: Ontario, Intervenor #2; The Association of Allied Health Professionals: Ontario, Applicant v. **Perth & Smiths Falls District Hospital**, Responding Party v. Ontario Nurses' Association, Intervenor

Sale of a Business - Parties agreeing that merger of hospitals constituting sale of a business - Hospital continuing to operate out of two locations - Hospital seeking merger of certain bargaining units represented by 3 different unions - Board not satisfied that hospital merger had yet

resulted in intermingling so as to permit granting of relief under sub-section 64(6) of the Act - Application dismissed

**BEFORE:** *S. Liang*, Vice-Chair.

**APPEARANCES:** *John Wakely*, *Caroline Manley* and *Shirley Rogers* for the Ontario Hospital Association and Perth and Smiths Falls District Hospital; *Nelson Roland* for the Independent Canadian Transit Union and its Local 6; *Valerie MacDonald* and *Pat Gibson* for the Ontario Nurses' Association; *David Wright*, *Roger Haley* and *Bill McNicol* for Ontario Public Service Employees Union; *Simon Laxon*, *Sue McCulloch* and *Chris Luscombe-Mills* for the Association of Allied Health Professionals; Ontario; *Sean McGee* and *Doreen Leeder* for Canadian Union of Public Employees, Local 2119; *David P. Burns* for the group of employees.

**DECISION OF THE BOARD;** October 13, 1995

1. These matters are two applications brought pursuant to the provisions of section 64 of the *Labour Relations Act*, and an application for certification.

2. In the applications under section 64 of the Act, the applicant is the Perth and Smiths Falls District Hospital (hereinafter referred to as "the Hospital"). This hospital was created out of the merger of two hospitals, the Smiths Falls Community Hospital (referred to herein as "Smiths Falls"), located in Smiths Falls, and the Great War Memorial Hospital ("Great War"), located in Perth, 22 kilometres away. The merged Hospital continues to operate out of the two locations. The Hospital seeks in these applications the merger of certain bargaining units working out of the two locations and currently represented by the Canadian Union of Public Employees ("CUPE"), the Ontario Public Service Employees Union ("OPSEU") and the Independent Canadian Transit Union ("ICTU"). Henceforth, in this decision, the two applications will be referred to in the singular since this was the manner in which the parties have dealt with them.

3. Section 64 of the Act provides, in part:

64.(1) In this section,

"business" includes one or more parts of a business; ("entreprise")

"predecessor employer" means an employer who sells his, her or its business; ("employeur précédent")

"sells" includes leases, transfers and any other manner of disposition; ("vend")

"successor employer" means an employer to whom the predecessor employer sells the business. ("employeur qui succède")

(1.1) This section applies when a predecessor employer sells a business to a successor employer.

(2) If the predecessor employer is bound by a collective agreement, the successor employer is bound by it as if the successor employer were the predecessor employer, until the Board declares otherwise.

(2.1) If the predecessor employer is a party to any of the following proceedings, the successor employer is a party to the proceeding as if the successor employer were the predecessor employer, until the Board declares otherwise:

1. A proceeding before the Board under any Act.

2. A proceeding before another person or body under this Act, the *Hospital Labour Disputes Arbitration Act*, the *Crown Employees Collective Bargaining Act, 1993* or the *Agricultural Labour Relations Act, 1994*.
3. A proceeding before the Board or another person or body relating to the collective agreement.

(2.2) If the predecessor employer has given or been given a notice relating to bargaining for a collective agreement or has requested the appointment of a conciliation officer or mediator, the successor employer is considered to have given or been given the notice or to have made the request, until the Board declares otherwise.

(3) If, when the predecessor employer sells the business, a trade union is the bargaining agent for any employees of the predecessor employer, has applied to become their bargaining agent or is attempting to persuade the employees to join the trade union, the trade union continues in the same position in respect of the business as if the successor employer were the predecessor employer.

(4) An interested person, trade union or council of trade unions may apply to the Board to determine,

- (a) a question concerning the scope of bargaining rights of the trade union referred to in subsection (3); or
- (b) a conflict in the bargaining rights of the trade union referred to in subsection (3) and another trade union representing employees of the successor employer.

(4.1) On an application under clause (4)(a), the Board may alter the composition of the bargaining unit for which the trade union referred to in subsection (3) holds bargaining rights.

(4.2) On an application under clause (4)(b), the Board may alter the description of a bargaining unit in a certificate issued to any trade union or the definition of a bargaining unit in a collective agreement.

(5) An interested person, trade union or council of trade unions may apply to the Board within sixty days after the predecessor employer sells the business for the termination of the bargaining rights of the trade union referred to in subsection (3).

(5.1) On an application under subsection (5), the Board may terminate the bargaining rights of the trade union only if it considers that the successor employer has changed the character of the business so that it is substantially different from the business of the predecessor employer.

(6) This subsection applies if the successor employer carries on one or more other businesses and the successor employer intermingles the employees of the business sold to him, her or it with those of another business. On application, the Board may,

- (a) declare that the successor employer is no longer bound by the collective agreement to which the predecessor employer was bound;
- (b) determine the unit or units of employees that are appropriate for collective bargaining;
- (c) declare which trade union or council of trade unions, if any, becomes the bargaining agent for the employees in each of the bargaining units;
- (d) amend, to the extent the Board considers necessary, any certificate issued to a trade union or council of trade unions or any bargaining unit defined in any collective agreement; and



- (e) define or redefine the seniority rights under any collective agreement of the employees concerned.

(7) Where a trade union or council of trade unions is declared to be the bargaining agent under clause (6)(c) and it is not already bound by a collective agreement with the successor employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 14.

(8) Before disposing of any application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

(9) Where an application is made under this section, an employer is not required, despite the fact that a notice has been given by a trade union or council of trade unions, to bargain with that trade union or council of trade unions concerning the employees to whom the application relates until the Board has disposed of the application and has declared which trade union or council of trade unions, if any, has the right to bargain with the employer on behalf of the employees concerned in the application.

(10) A declaration under subsection (6) has the same effect as a certification under section 9.1, for the purposes of sections 5 (application for certification), 58 (application for termination), 60 (termination of bargaining rights), 62 (application for certification or termination) and 125 (application for termination).

4. This application is based in particular on the provisions of section 64(6). The parties do not disagree that the merger of the two former hospitals into the new Hospital constitutes a sale of a business within the meaning of section 64. They disagree as to whether the further conditions required to invoke the relief under section 64(6) are present. The Hospital and CUPE take the position that the Hospital has intermingled employees of one aspect of the business (corresponding to one location) with employees of another aspect of the business (the other location). OPSEU and ICTU maintain that there has been no intermingling of employees as a result of the merger. Further, they state that even if there has been some nominal intermingling, no relief is warranted because given the geographic basis of current bargaining rights, it is possible to preserve the integrity of the bargaining units without creating serious problems for the employer. ICTU also takes the position that it is a craft unit and the Board ought not to merge its unit with another even if it is otherwise warranted.

5. The third application before us is a certification application pertaining to one of the locations, brought by the Association of Allied Health Professionals: Ontario ("AAHPO"), who have also intervened in the section 64 applications. As a preliminary matter, the Board was asked to rule on whether the certification application ought to proceed before the section 64 applications. In an oral ruling, I found that it was appropriate to determine the issues in the section 64 applications first.

6. The parties were able to agree to most of the facts for the purposes of the section 64 applications, including a number of documents. This was supplemented by brief oral evidence called by the Hospital.

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7. The rough composition of the bargaining units which are affected by these applications is as follows ("FT" denoting full-time, and "PT" denoting part-time):

Smiths Falls	CUPE service units (including maintenance) — 51 FT — 85 PT and casual
Great War	OPSEU office, clerical and service unit — 46 FT — 51 PT  OPSEU paramedical unit — 7 FT — 9 PT  ICTU unit (stationary engineers and maintenance) — 4 FT

8. There are separate CUPE full-time and part-time collective agreements. There is one OPSEU agreement which covers full and part-time office, clerical and service employees.

9. The office and clerical employees at Smiths Falls are not represented by a union. They appeared at the hearing, however, through a representative and made representations on the issues before me. The paramedical employees at Smiths Falls are the subject of the AAHPO application for certification. For the purposes of the section 64 applications, therefore, these employees are as yet unrepresented by a union. The number of unorganized employees at both locations totals about 98, with about half of those affected by the AAHPO application. There is also a small unit of stationary engineers at Smiths Falls, represented by the Canadian Union of Operating Engineers, which is unaffected by the relief requested in these applications.

10. The Hospital requests that the Board merge the office and clerical, service and maintenance employees into a single bargaining unit across the two locations, including those employees who are currently unrepresented. The Hospital proposes that the Board conduct a three-way representation vote, between CUPE, OPSEU and ICTU. CUPE supports this position.

11. Further, the Hospital proposes that the paramedical units at the two locations be merged, with a two-way representation vote between OPSEU and a no-union option.

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12. The amalgamation of the hospitals became official effective March 31, 1995, the date of an "Amalgamation Agreement to Form Perth and Smiths Falls District Hospital" between the Smiths Falls Community Hospital and the Great War Memorial Hospital of Perth District. The merger had, however, been in the planning for some time. In April of 1994, the bargaining agents at the two locations were advised of the impending merger and the parties had various meetings to try and resolve certain issues arising out of the merger. It appears that the major issue was how to deal with seniority, and particularly whether non-union service should be given recognition for bargaining unit positions. No agreement was reached, and the documents suggest that this was due to some lack of certainty about the impact of the impending merger on staffing.

13. Even before the official merger date, some aspects of the merger were implemented, in the sense that certain services were consolidated. In the fall of 1994, convalescent beds at the Smiths Falls site were transferred to the Perth site. Over time, the obstetrics department of the Perth site was transferred to Smiths Falls. The computer system for the two locations was consolidated in Perth, as was the switchboard. The finance department at Perth was relocated to Smiths

Falls. Doctors now have privileges at both sites, and patients may be placed at one or the other location depending on the availability of beds. In general, as of the date of the hearing before me, many of the various departments of the hospitals have been merged in the sense that they are run by common management with a common budget. It is the intention of the Hospital, over the next two years, to merge the remaining departments. However, although this is the intention, there is some lack of specificity about when this will occur for all departments. For instance, at the time of the hearing, there was no current plan for the merger of the Plant Operations departments at the two locations and such merger was not budgeted for the current fiscal year.

14. Accompanying the consolidation of services was the movement of certain equipment from one hospital to another. The effect of the rationalization of services on employees is primarily that jobs have been lost. A number of employees, both bargaining unit and non-union have been laid off. It does not appear that more than one to three jobs in total have been created at both locations as a result of the merger. In fact, one of the few concrete examples of a movement of jobs from one location to another relates to switchboard staff. A number of switchboard employees at Smiths Falls (non-bargaining unit) were given notices of layoff when the switchboard was relocated to Perth. These employees have had relatively long service with the Hospital. One full-time switchboard position has been created at Perth, which has been filled by a laid-off OPSEU bargaining unit member. Two more part-time switchboard positions at Perth have been posted but not yet filled.

15. The parties are agreed that no bargaining unit employees have been transferred from one location to the other as a result of the merger (apart from ONA members, which are not affected by this application). For the most part, where one site took over the provision of services for both sites, the work is being performed using the existing staff complement at that site.

16. There has been a history of some employees working at both locations when they were two separate employers. Therefore, some employees have been covered by both the OPSEU and CUPE collective agreements. The OPSEU and CUPE agreements do not recognize service at the other location. Vacancies at one location, however, are posted at the other location and positions are filled in accordance with the applicable collective agreement at the site where the vacancy exists.

17. The OPSEU and CUPE agreements are geographically based. The CUPE full-time and part-time collective agreements have recognition provisions which refer to employees "engaged at the Smiths Falls Community Hospital, Smiths Falls, Ontario". The collective agreement which pertains to the OPSEU full-time and part-time office, clerical and service unit has four separate recognition provisions which relate to distinct groups of employees within the overall unit. Each has slightly different wording. Two of the four provisions refer to employees of the Great War Hospital "in Perth", and "at Perth". The other two refer to the hospital's employees without a specific geographic reference. All four groups are treated by the parties as one bargaining unit. There was no suggestion that any one group within the bargaining unit may cover a different geographic area than the others, and indeed, the parties understand that the bargaining unit overall is confined to employees at the hospital in Perth. The OPSEU paramedical unit has yet to reach a first agreement, but the bargaining rights are confined to employees "in the Town of Perth".

18. As indicated above, the parties have agreed that there has been no movement of bargaining unit personnel from one location to another as a result of the merger. In evidence, the representative of the Hospital, Caroline Manley, testified that the only reason that bargaining unit personnel have not been transferred from one location to the other, or that non-bargaining unit personnel have not been transferred into a bargaining unit position, is because "of existing union



contracts". When asked to be more specific about this in cross-examination, Ms. Manley stated that she was referring to an instance in May of 1994 when the hospitals (not yet merged) attempted to assign two maintenance employees in the CUPE unit from one hospital to work at the other hospital for a few days. The assigning hospital found itself faced with a grievance from CUPE and the assignment was revoked. The work in question was work of the ICTU bargaining unit. There have been no further instances of this type.

19. Ms. Manley also testified that *if* the work an employee performed was transferred from one site to another, the Hospital's preference would be to have that employee follow the work rather than be laid off. In general, Ms. Manley stated that the separate collective agreements "could" be an impediment to employee transfers.

20. The Ontario Nurses' Association represents nurses at both locations of the Hospital. ONA and the Hospital have reached an agreement on the merger of its two bargaining units as a result of the merger. Nurses have been transferred from one location to another as a result of the merger.

21. In the collective agreement between OPSEU and the Great War Hospital, the parties agreed to abide by the "Guidelines for Employee Transfer Arrangements in Hospital Service Rationalization" as developed by the Ontario Hospital Industry Labour Management Committee, April 1986. These Guidelines address union representation issues that flow from the merger or amalgamation of institutions providing health care service. At paragraph 10 of these Guidelines, it states:

If more than one union holds bargaining rights for employees in the affected units, then the unions involved will request the Ontario Labour Relations Board's assistance in conducting a vote of all employees in the resultant unit (both part time and full time) in order to determine which union will hold the bargaining rights for the resultant unit. One of the unions involved may wish to waive the need for a vote where the large preponderance of the population is represented by the other union. The operative collective agreement will be that of the receiving unit, administered by the union determined by such a vote or arrangement to hold the resultant bargaining rights.

22. The Guidelines also state, however:

... It is clear that nothing in these guidelines would preclude any party to the transfer situation from seeking a solution to a problem of this sort through the Ontario Labour Relations Board. It was felt, however, that guidelines established by the committee as equitable will allow the parties to resolve such issues without having to use the presently available avenues of settlement.

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23. The central issue before me is whether there has been an "intermingling" of employees as a result of the merger which warrants the measures provided for in section 64(6) of the Act. In order to understand the purposes of section 64(6), it is useful to place it in the context of sections 64(2) to (3), which have been discussed by the Board on many occasions. Although the wording of these sections have been amended recently, their general thrust remains the same. The Board has stated that the purposes of sections 64(2) to (3) is to preserve the bargaining rights which exist in a sold business: see *The Municipality of Metropolitan Toronto*, [1992] OLRB Rep. Mar. 315. Section 64(4) provides a means for the Board to redefine the scope of a bargaining unit or resolve a conflict between the bargaining rights of two trade unions, in order to give effect to the preservation of pre-existing bargaining rights.

24. Section 64(6) gives the Board broader remedial powers. The result of the application 64(6) may be that a trade union may lose its bargaining rights altogether, or may find itself representing a much different unit than before the sale. Section 64(6) is invoked when it is not possible or practicable to focus on the simple preservation of bargaining rights, because the very logic of the pre-existing bargaining units has been brought into question as the result of a sale. In *New Dominion Stores Inc.*, [1986] OLRB Rep. Apr. 519, the Board has described the mischief to which section 64(6) [then 63(6)] is directed as being:

... a situation in which there is a *de facto* overlap or merger of bargaining units, so that it is difficult to preserve bargaining rights in the "like unit" without creating operational problems for the successor employer or prejudicing the established rights of the employees. It would make no sense if employees working side by side performing similar tasks were subject to different collective bargaining regimes. In such circumstances, it might also make sense to direct a representation vote to determine which of two unions the employees wish to represent them. ...

25. In *New Dominion Stores Inc.*, the Board found that the bargaining unit represented by the union had not been altered by the sale and was still easily identified. The Board found that there was no intermingling at the level of bargaining unit employees nor any evidence that such intermingling was likely to occur in the near future. In these circumstances, the Board found no reason to put the bargaining rights of the union to the test of a representation vote and instead amended the provisions of the two conflicting collective agreements to resolve the conflict.

26. In a number of the Board's decisions, the Board has looked at the effect of a sale of a business on geographically-based bargaining rights. There are decisions which support the notion that if bargaining rights are limited to one geographic location, the transfer of employees to another location as a result of a sale will not lead to a transfer of bargaining rights to that location. Likewise, the transfer of employees from the former location into another trade union's bargaining unit at another location will not be considered an intermingling if the scope clause covering employees at the former location does not extend to the second location: see *Silverwood Dairies*, [1980] OLRB Rep. Oct. 1526, and the cases cited therein. In *Loeb Inc.*, the Board found that the two aspects of the business created as a result of a sale remained functionally separate and identifiable. Further the scope clauses of the two collective agreements at issue, as they had been applied by the parties, did not conflict. The Board found no reason in the circumstances to apply section 64(6).

27. In *Caressant Care Nursing Home of Canada Limited*, [1984] OLRB Rep. Aug. 1060, the Board described the "problem" addressed by section 64(6) in the following terms:

... It is true that the subsection speaks of the purchaser intermingling the *employees* of one business with those of another. But that appears to be simply a more precise way of referring to the intermingling of the businesses themselves: it is in fact the "employees" of the businesses who are capable of being "intermingled". The focus of section 63 is on the *business*, and it is the practical problem of running two *integrated* businesses, either each ostensibly under a different collective agreement, or one under a collective agreement and one "non-union", which would appear to have prompted the Legislature to provide the relief contemplated by subsection 6. ...

28. *Caressant Care* suggests that the "intermingling" required to trigger the response of the Board under section 64(6) may not require that there be conflicting scope clauses. It may be, for instance, that where as a result of a sale an employer operates an integrated business out of two locations which are subject to different site-specific collective agreements, the Board may find it appropriate to merge the existing bargaining units. Further, in focusing on the notion of the *business* and the practical problems of running two integrated businesses *Caressant Care* also suggests that the type of intermingling required to invoke section 64(6) may not require "employees working side by side" subject to different collective bargaining regimes. But even on the facts of



that case, the Board found that as a result of the sale of business, there were employees of a predecessor business covered by a collective agreement who ended up working together with employees of a business not covered by a collective agreement.

29. It is not clear to me on the facts of this case as they were presented at the hearing, that there has been intermingling within the meaning of section 64(6) as it has been applied by the Board thus far. To the extent that the lack of a conflict in competing collective agreements has been found to weigh against a finding of intermingling, no such conflict exists in this case. Also, to the extent that the Board has looked to whether employees who may be covered by different collective bargaining regimes will be working together performing the same work, this also does not exist in this case. There is no doubt that there has been an integration of businesses, at a certain level. Services have been consolidated, management merged and budgets combined. But to date, this integration of services has not been accompanied by a flow of job opportunities from one location to another. Neither does the evidence suggest that this is in the plans for the near future. In effect, although the “businesses” of the two former hospitals has been altered somewhat by the merger, it is still possible to define them and it is still possible for the employees in these bargaining units to identify which “business” they work for.

30. Even if, on a broad and expansive reading of the Board’s decisions in this area, I am inclined to characterize some of the effects of this merger as an intermingling, it is not the type of intermingling which would warrant the exercise of my remedial discretion under section 64(6). Even where the Board has found or is prepared to assume some intermingling in a given fact situation, it must be more than “nominal” to warrant the Board’s intervention under section 64(6). In *Hamilton Cargo Transit Limited*, [1983] OLRB Rep. June 887, the Board found a degree of intermingling in the sense that a small number of drivers normally working under one collective agreement were “borrowed” from time to time to supplement another aspect of the business. This did not lead the Board to conclude that the two businesses did not remain distinct and identifiable. No remedy other than the amendment of a scope clause in a collective agreement was ordered.

31. The Board might have a different view of the matter if it were apparent that the consolidation of services at the two locations has led to a situation where the Hospital is being run, or is intended to be run, at every level of its operation, as an integrated business. But on the evidence before me, it does not appear that the work of the bargaining units at the two locations will be any more difficult to define than it ever has been. There is no suggestion that in order to implement the consolidation of services, for instance, the Hospital intends to assign or transfer employees from one location to another as needed. Work has been transferred, but not work opportunities. In other words, the merger of the two former hospitals has not led to a situation where the fundamental integrity of the bargaining units at those two locations has been called into question.

32. As indicated earlier in the decision, there was some general evidence to the effect that the collective agreements have prevented the Hospital from transferring employees from one bargaining unit to another, or from non-bargaining unit positions to bargaining unit positions in response to the merger. If this suggestion that the Hospital has been prevented from implementing the merger because of the existing bargaining structure had been supported by the facts, I might have had a different view of the matter. However, as I also indicated, the only concrete example which the Hospital’s representative was able to give on this point was an isolated incident in May of 1994 which has not been repeated. There was no evidence that the Hospital either intended or even wished to make this type of job assignment a common practice in the future. Likewise, there was evidence that *if* the work an employee performed was transferred from one site to another, the Hospital’s preference would be to have that employee follow the work rather than be laid off but that the separate collective agreements could be an impediment to employee transfers. However,



again, there was no evidence to the effect that such employee transfers relating to these bargaining units were any part of the Hospital's plans for the implementation of the merger.

33. The Board has described the remedies under section 64(6) as "extraordinary" (see *Loeb Inc.*), no doubt because of the potential of these remedies to fundamentally alter bargaining structures in a workplace. The Board will not hesitate to invoke the relief, however, where new business structures give rise to illogical bargaining arrangements. Further, as the Board indicated in *The Municipality of Metropolitan Toronto*, the Board may be disposed to give less weight to the pre-existing status quo where, as in an essentially two-union situation, there is no issue about continued representation of employees. However, the Board does have to be satisfied that the logic of the current collective bargaining structure in the case of this Hospital has been called into question as a result of the merger, and I am not convinced that the evidence has established this.

34. In argument, the Hospital referred to the "Guidelines for Employee Transfer Arrangements in Hospital Service Rationalization" referred to earlier in this decision. It was stated that the Guidelines, to which OPSEU and the Hospital agreed, address the situation before the Board and ought to govern. If the submission is that by incorporating these Guidelines into their collective agreement the parties intended the Board to apply the provisions of those Guidelines in an application made under section 64(6), I cannot agree. It is clear from that document that the Guidelines are meant to be exactly that, Guidelines. It is also clear that the parties have specifically left open the right to apply to the Board in the event of a disagreement about the labour relations impact of a hospital merger. Nothing in those Guidelines prevents parties from obtaining remedies consistent with the Board's interpretation and application of section 64(6). In any event, it is not said that the Guidelines in any way bind ICTU, one of the parties to this proceeding.

35. The Hospital's application for relief under section 64(6) is accordingly dismissed.

36. During the course of the hearing, counsel for OPSEU raised an issue pertaining to certain paramedical employees working at the Perth location, formerly employed by the Smiths Falls Hospital and now employed by the new Hospital. OPSEU asks the Board to declare that these employees are part of its bargaining unit as a result of this sale. This issue was not fully argued, nor was there a sufficient factual basis provided upon which I can make any determination. If OPSEU wishes a determination, I direct that it provide submissions in writing along with the factual basis of those submissions, to the Board and to the other parties. The other parties will have an opportunity to note any factual disagreement and provide their written submissions. The parties' submissions should address the issue of whether section 64(6) has any application to the OPSEU paramedical bargaining unit at Perth.

37. Finally, during the course of the hearing, ONA, as an intervenor, requested that the Board make certain directions regarding the description of its bargaining unit, and the managerial status of certain persons (for which it requests the appointment of a Labour Relations Officer). These matters are beyond the scope of the hearing before me and indeed, it is not clear to me that they arise as issues under section 64 of the Act, as opposed to other provisions of the Act. ONA is free to pursue these issues, if still outstanding, under the appropriate provisions of the Act.

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**4625-94-R** Ontario Public Service Employees, Applicant v. **St. Mary's of the Lake Hospital**, Responding Party v. Kingston General Hospital, Intervenor #1 v. Association of Allied Health Professionals: Ontario, Intervenor #2 v. The Religious Hospitallers of Saint Joseph of the Hotel Dieu of Kingston (Hotel Dieu Hospital), Intervenor #3, v. Employees' Association, St. Mary's of the Lake Hospital, Intervenor #4 v. Canadian Union of Public Employees and its Local 1974, Intervenor #5

**Sale of a Business - Remedies - Parties agreeing that ongoing rationalization of rehabilitation services previously provided by three Kingston hospitals constituting "sale of a business"- Board satisfied that process of rationalization sufficiently crystallized so as to constitute intermingling - Board asked to determine seniority issues under section 64(6) of the Act - Board directing that employees transferred into St. Mary's Hospital bargaining unit who had previously been employed at Hotel Dieu Hospital (subject to OPSEU collective agreement) or Kingston General Hospital (subject to CUPE collective agreement) should have their accrued seniority recognized in full**

**BEFORE:** *Roman Stoykewych*, Vice-Chair.

**APPEARANCES:** *David Wright, Robin Gordon, Ed Ogobowski, Barbara Linds, Roger Haley and Fern Abraham* for the applicant; *Kees Kort and Gwen Pooley* for the responding party; *Steven Menard and Peter Lewis* for Kingston General Hospital; *M.I. Rotman and Maureen Fraser* for Association of Allied Professionals: Ontario; *Tony Button* for Hotel Dieu Hospital; *Phillip G. Hunt and Brian Harris* for Employees' Association, St. Mary's of the Lake Hospital; *Linda Dumbleton and John Bastos* for Canadian Union of Public Employees.

#### **DECISION OF THE BOARD;** October 3, 1995

1. This is an application pursuant to the provisions of section 64 of the *Labour Relations Act*. The portion of that section relevant to the present application reads as follows:

**64.(6)** This subsection applies if the successor employer carries on one or more other businesses and the successor employer intermingles the employees of the business sold to him, her or it with those of another business. On application, the Board may,

- (a) declare that the successor employer is no longer bound by the collective agreement to which the predecessor employer was bound;
- (b) determine the unit or units of employees that are appropriate for collective bargaining;
- (c) declare which trade union or council of trade unions, if any, becomes the bargaining agent for the employees in each of the bargaining units;
- (d) amend, to the extent the Board considers necessary, any certificate issued to a trade union or council of trade unions or any bargaining unit defined in any collective agreement; and
- (e) define or redefine the seniority rights under any collective agreement of the employees concerned.

2. The application, brought by the Ontario Public Service Employees Union ("OPSEU"), arises out of the ongoing rationalization of rehabilitation services previously provided by the three Kingston hospitals. In labour relations terms, the primary consequence of the rationalization is the

transfer of all rehabilitation services currently being provided by personnel in the rehab units of Kingston General Hospital ("KGH") and Hotel Dieu Hospital ("HDH") to a consolidated "Regional Rehabilitation Centre" operating out of facilities at St. Mary's of the Lake Hospital ("SMOL"). Upon the completion of this transfer process, which is expected to take place in a piece-meal fashion spanning several years, the rehab units of KGH and HDH will both be closed.

3. The bulk of the employees at SMOL are represented by the Employees' Association of St. Mary's of the Lake Hospital ("EASMOL"), which has concluded a series of collective agreements with the employer hospital with respect to separate units of full-time employees and part-time employees. The scope clause of the collective agreements cover a broad range of employees, including those engaged in RPN, clerical and office, janitorial, maintenance, kitchen staff and therapy aide capacities. Also present at SMOL is a bargaining unit of nurses represented by the Ontario Nurses Association ("ONA") and one of paramedical personnel, represented by the Association of Allied Health Professionals: Ontario ("AAHP:O"). It is anticipated that a total of approximately 57 full-time and 37 part-time employees will be transferred from KGH to SMOL, and 11 full-time and 8 part-time employees will be transferred from HDH to SMOL.

4. The majority of the contemplated transfers are to positions that are presently covered by SMOL's collective agreements with AAHP:O and ONA. It appears that SMOL and the unions concerned have reached agreement with respect to a substantial majority of the matters related to these transfers, including that of the recognition of employees' seniority upon transfer or a "dove-tailing" basis. However, no such agreement has been reached with respect to the approximately 24 full-time and 12 part-time employees currently represented at their hospitals by the Ontario Public Service Employees Union ("OPSEU") and the Canadian Union of Public Employees ("CUPE"), who are transferring into positions within the scope of the collective agreements between SMOL and EASMOL. The present decision of the Board is concerned with the question of retention of these employees' seniority upon their transfer to SMOL.

\* \* \*

5. All of the parties to this application are in agreement that the above-described rationalization process constitutes a "sale of a business" within the meaning of section 64 of the Act. Furthermore, both OPSEU and CUPE concede that they have no claim to the bargaining rights at SMOL as a result of the transfer of employees formerly represented by them into the EASMOL units, and agree that EASMOL is appropriately the bargaining agent for the now-enlarged units. Finally, all parties, with the exception of EASMOL, are in agreement that the seniority of the transferred employees that accrued under the collective agreements of CUPE and OPSEU should be recognized once they are in the EASMOL units, and in that respect, the seniority "lists" of the incoming employees ought to be "dove-tailed" with those of the existing complement. By contrast, EASMOL takes the position that seniority of employees entering into its bargaining units should not to be recognized, and that the incoming employees ought to be "end-tailed" for purposes of their placement on the seniority list.

6. The matter came on before me for hearing on July 6, 1995. Earlier, in correspondence dated June 9, 1995, the Board was advised that the parties had reached the following agreements at a Labour Relations Officer meeting the previous day:

- "(1) The transfer of Rehabilitation Services from Hotel Dieu Hospital and Kingston General Hospital to St. Mary's of the Lake Hospital constitutes a "sale of a business" within the meaning of section 64 of the *Labour Relations Act*.
- (2) The Applicant, the Responding Party, and all the intervenors agreed to deal with the issue of seniority rights of those persons who would transfer from Hotel Dieu Hospi-



tal and Kingston General Hospital to St. Mary of the Lake Hospital in isolation and without prejudice to any rights of the Applicant, the Responding Party, or all of the intervenors with respect to any other issues which may arise in these proceedings.

- (3) That the Board convene a hearing to deal with the seniority issue as soon as possible.”

7. Nevertheless, at the outset of proceedings, counsel for EASMOL took the position that the Board could not determine the seniority issue because an “intermingling of employees” within the meaning of subsection 64(6), had not yet occurred. Therefore, it was submitted, the application with respect to the seniority determination was premature. With respect to the agreement of June 8, 1995, counsel argued that the caveats included in paragraph (2) preserved his client’s right to make the prematurity argument and that, in any event, the agreement of the parties in itself could not provide the Board with powers it did not otherwise possess by virtue of statute. All of the other parties present at the hearing opposed the motion, relying both upon the terms of the above-noted agreement and the assertion that intermingling had in fact occurred. After considering the parties’ submissions I ruled orally that I would proceed to hear the merits of the parties’ dispute on the assumption that the Board possessed the necessary powers to do so. Since the date of the hearing, I have further concluded that the circumstances are such that it would be appropriate for me to exercise my discretion under section 64(6)(e). The following are my reasons for so determining.

8. Although the parties’ procedural agreement appears to contemplate the Board entertaining the parties’ submissions and issuing a ruling with respect to the seniority issue, (particularly since the caveats relate to issues other than seniority) it is not necessary for me to rely upon that agreement to proceed to the merits of this application. That is because I am satisfied that, in any event, an intermingling of employees within the meaning of subsection 64(6) of the Act has occurred.

9. I accept that none of the affected employees have been physically transferred from their respective hospitals to SMOL, and that the rationalization process is far from complete. Nevertheless, the Board notes that the full effects of the rationalization are hardly a matter for speculation, and that the employer has presented a concrete and detailed plan with respect to both the rationalization and the contemplated labour relations effects of the transfer. Further, pursuant to this plan, a portion of the work forces of the predecessor hospitals are already operating under the direction of SMOL personnel (albeit in their predecessor hospitals), and various labour relations processes have been put into place in order to effect the “physical” transfer of employees: particular positions have been selected for the move, and the affected employees and their bargaining agents have been notified that they will be subject to the transfer. Indeed, it appears that the rationalization process is in significant measure deadlocked due to uncertainty over the seniority issue, as senior employees in both HDH and KGH are understandably reluctant to agree to such transfers in circumstances in which their substantial seniority could be jeopardized.

10. Subsection 64(6) of the Act provides the Board with certain powers to reconfigure existing collective bargaining structures that have ceased to become reflective of, or responsive to, the new array of labour relations interest arising from a successor employer’s “intermingling” of employees of a “purchased” business with those of another business. The Board has generally adopted a purposive approach in its interpretation of the “intermingling” provisions. Thus, while the “side-by-side” integration of two previously distinct workforces has been viewed as the best evidence of intermingling, the Board has also made it clear that a physical transfer of employees is not a necessary prerequisite to the exercise of its discretion, provided that the operational processes of two recently-merged entities are such as to give rise, in a substantial manner, to the labour relations mischief intended to be addressed by these provisions. (*Caressant Care Nursing*

*Home* [1984] OLRB Rep. Aug. 1060; *Union Felt Products (Ontario)*, Decision of the Board, July 15, 1992) [now reported at [1992] OLRL Rep. July 871] In this regard, mere speculative harms that might affect the operations of a business entity cannot be the basis upon which the Board exercises its powers under subsection 64(6). That, however, is not the case in the present instance, nor are the circumstances such as to make me conclude that a party to this proceeding is seeking an “advance ruling” from the Board. Given the relatively advanced stage of the rationalization process in the present application, and the clear direction in which that process is manifestly headed, the labour relations difficulties that are encountered can hardly be characterized as hypothetical. In particular, the reluctance of employees to transfer from one hospital to another is not a potential problem, but a current obstacle to the successful integration of the three units. With that in mind, it is clear that the statutory objectives underlying subsection 64(6) would be fulfilled, and more generally, important labour relations interests advanced, were the Board to exercise its powers to assist in the orderly transfer of employees.

11. Accordingly, particularly bearing in mind that the kind of mischief to which the intermingling provisions of the Act were directed has fully materialized, I am satisfied that the rationalization process of the three units has sufficiently crystallized so as to constitute an intermingling of employees within the meaning of subsection 64(6) of the Act and that it is otherwise appropriate to exercise the discretion accorded to the Board under these circumstances.

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12. Under subparagraph 64(6)(e) of the Act, the Board has been given the power to resolve questions related to collective agreement seniority rights upon an intermingling of employees resulting from the sale of a business. The grant of discretion is worded broadly and, while there is some case law to provide guidance with respect to the disposal of seniority list questions in the context of unfair representation claims (*Dufferin Aggregates*, [1982] OLRB Rep. Jan. 35; *Michael Burkett*, [1988] OLRB Rep. March 274) and, perhaps more usefully, in the context of the combination of bargaining units (*F.M.G. Timberjack*, [1995] OLRB Rep. Feb. 115), there is little authority that is of practical assistance with respect to the function required of the Board in the present application.

13. Nevertheless, the practical labour relations considerations that emerge from these circumstances are neither unique nor unusual. For that reason, argument with respect to the seniority issue proceeded, in significant measure, on the basis of consensus as to the relevant applicable principles. Thus, all parties argued that, in the absence of agreement between the parties on the seniority question, and particularly as between the SMOL and EASMOL (which are the parties to the collective agreement in question) it was appropriate for the Board in this instance to exercise what was characterized as an “interest arbitration” function with respect to the seniority question. (See *Saint-Vincent Hospital*, [1995] OLRB Rep. May 677.) In this respect, the role of the Board is to consider the competing claims to seniority in light of the prevailing circumstances, and to effect an optimal resolution of the interests involved. In the course of such a balancing of interests, considerable weight ought to be placed in favour of the retention of seniority, given its enormous significance to employees in the collective bargaining system. For that reason, an employee’s seniority ought not to be abrogated except in the most unusual circumstances. In the context of the merger of seniority lists, the parties were in further agreement that, absent some compelling justification, for which objective evidence is required, it is the usual practice to “dovetail”, or to otherwise accord recognition of seniority.

14. The parties, of course, differed as to the applicability of these principles to the present case and, in effect, what weight to accord the respective claims to seniority. Each of the parties,



with the exception of EASMOL, argued that a dovetailing of the seniority lists should be directed, in which “incoming” employees would have their accumulated seniority recognized in full, and for all purposes, under the relevant EASMOL collective agreement. Counsel for EASMOL, by contrast, submitted as appropriate various forms of “end-tailing”, each of which had the result of placing the employees entering into the bargaining units at the bottom of the current seniority lists. It was the thrust of the argument that the present circumstances were precisely such as to place them outside the application of the principles enumerated above because of the disproportionate prejudice to the interests of the current EASMOL employee that would result from a dovetailing of the lists.

15. It is noteworthy that, in response to my questions during counsel’s submissions as to whether a form of seniority list integration other than the extreme options presented in argument had been considered by the parties, I was advised that various such possibilities had been thoroughly discussed and repeated as inappropriate in their settlement discussions. No such intermediate positions were advanced by any party during the course of the proceedings before me and, under such circumstances, I have not considered such options in the course of my deliberations.

16. Having regard to all of those circumstances, I am satisfied that a merged seniority list in which the incoming employees have their seniority recognized in full would be appropriate in this application. The rationalization of the three rehab units, as it is described in the voluminous materials filed with the Board and as elaborated upon in the submissions of counsel, contemplates a transfer of both functions and corresponding funding for positions. It does not entail the overall reduction of staffing levels. While, of course, it is difficult to be sanguine today with respect to prospects of continued employment in the publicly-funded sector, I note that the employer (SMOL) has made a “soft” commitment to the union that no loss of jobs would ensue directly from the reorganization. Furthermore, the positions being transferred into the EASMOL units appear for the most part to be relatively specialized ones, with a high correlation between the function and the employee transferred. Thus, while it is true that the average seniority of the incoming employees is high relative to employees in the EASMOL units (and, as a result, the incoming group would, on average, have a higher claim to seniority-based benefits were their seniority to be recognized), it is far from clear as to whether displacement would result from the rationalization, at least in the foreseeable future.

17. Thus, to use the language of the authorities referred to by counsel for EASMOL (*Greater Niagara General Hospital*, unreported arbitration decision of Gail Brent, dated April 25, 1995; *Central Okanagan School District No. 223 v Renaud* (1992), 95 D.L.R. (4th) 577 (S.C.C.)), this is not a case in which the size of the “economic pie” remains unchanged, and for which therefore the appropriate question might be whether incoming employees are to be “accommodated”. Instead, to continue the analogy, the employees entering into the EASMOL bargaining unit by virtue of the rationalization bring with them (in addition to their claim for recognition of seniority) an additional piece of that “pie”, commensurate in size to their numbers, in the form of a discreet, ongoing, and viable unit.

18. In such circumstances, what is required is a balancing of interests informed by the importance of seniority to employees, and in which the respective claims to seniority of each of the groups are accorded substantially equal weight. Bearing this in mind, I do not find that the interests of the EASMOL employees in general would be adversely affected to a substantial degree were the seniority lists to be dove-tailed, and certainly not in a such a manner as to warrant the total non-recognition of the incoming employees’ seniority. Indeed, to place the incoming employees at the bottom of the seniority list in these circumstances would in many respects create a wind-fall for the employees currently in the EASMOL bargaining unit.



19. Furthermore, I do not find compelling the argument advanced by counsel for EASMOL to the effect that a dovetailing of seniority lists would effect a disproportionate unfairness upon a specific group of employees in the bargaining unit who were formerly employed at the nearby Ongawanada Hospital. These employees were transferred into the EASMOL unit in 1990 on an end-tail basis upon the closure of a portion of that hospital. Of the 26 employees who transferred in 1990, some 23 have remained at SMOL. Given the relative absence of hirings in the interim, they remain, as a group, at or near the bottom of the seniority lists. All 24 of the proposed full-time transferees from KGH and HDH have more seniority than any of the full-time employees in the "Ongawanada group". While some of the part-time employees who transferred from Ongawanada have accrued more seniority than the incoming part-time employees, on average they would enjoy considerably less seniority than would the employees coming from KGH or HDH. The incorporation of the incoming employees on a dove-tail basis in these circumstances, it was contended by counsel for EASMOL, would have the effect of "leap-frogging" the incoming employees in seniority terms over employees who had worked at SMOL for almost five years. For that reason, an approach consistent with this "past practise", it was submitted, would produce a more equitable result.

20. It is, of course, clear that the "Ongawanada" employees, as a group, would remain the most vulnerable to layoffs and have a commensurably weaker claim to collective agreement benefits based on seniority were they to remain at or near the bottom of the seniority list (as would be the case in the event that the lists were dovetailed). Conversely, there is no question that their interests in this respect would be substantially advanced were the seniority of the incoming employees not to be recognized. That, however, is not the same as establishing that a dovetailing of the seniority lists would cause unfairness to them; nor is it apparent how, in the circumstances described above, the end-tailing of the incoming employees, all of whom have *greater* seniority, would produce a result in any respect more equitable.

21. In this respect, I am prepared to place considerably more weight upon the incoming employees' claims to retention of seniority than upon the claims to equal treatment that arise from the "past practise" of end-tailing. From the perspective of the Ongawanda employees, the rationalization of the rehab units on a dovetail basis can by and large be viewed as a "neutral" event. There is an expectation neither of job losses nor displacement resulting from the transfers. Subsequent events may well trigger layoffs, and in such an event, the Ongawanda group would likely be affected first and hardest. That, however, was also the case prior to the any transfers taking place, and in this respect, their vulnerability to layoff appears to result less from the rationalization than from their placement at the bottom of the list in 1990. Indeed, their very existence as a recognizable "group" is entirely a by-product of their being end-tailed. Under such circumstances, I am not persuaded that the employees in the Ongawanda group would be so seriously prejudiced by the full recognition of the incoming employees' seniority as to warrant a continuation of the end-tailing practise.

22. Finally, as discussed earlier, the employer's interest in these circumstances is clear, substantial and worthy of serious consideration. In the course of the rationalization process, the employees who are subject to transfer appear to be provided the option of moving to the "Regional Rehabilitation Centre" at SMOL or of remaining at their former hospitals in a different capacity. As noted above, employees, most of whose seniority is substantial, would be understandably reluctant to agree to a transfer to SMOL were there seniority not to be recognized. Thus, the employer's ability to attract the most experienced complement of employees to work in the newly consolidated rehabilitation centre would be seriously jeopardized, and the success of the entire rationalization process placed into considerable doubt were the seniority of the incoming employ-

ees not to be recognized. In my view, this is a further, weighty consideration militating in favour of recognizing the incoming employees' seniority.

23. As a result I am satisfied that the full recognition of the seniority of employees entering the EASMOL bargaining unit constitutes the most equitable and, in labour relations terms, most feasible reconciliation of the interests in the present application. In particular, I am not persuaded that the interest of the EASMOL employees would be affected in such a manner or to such a degree as to outweigh the interest in the retention of seniority by the incoming employees.

24. Accordingly, having regard to the foregoing, the Board:

- (a) declares that the transfer of Rehabilitation Services from Hotel Dieu Hospital and Kingston General Hospital to St. Mary of the Lake Hospital constitutes a "sale of a business" within the meaning of section 64 of the *Labour Relations Act*;
- (b) declares that, as a result of the aforementioned transfer, an intermingling of employees has occurred within the meaning of subsection 64(6) of the *Labour Relations Act*;
- (c) directs that the employees transferred into the EASMOL bargaining unit who had previously been employed at Hotel Dieu Hospital or Kingston General Hospital subject to the provisions of the OPSEU and CUPE collective agreements shall have the seniority they accrued under those agreements recognized in full upon their entry into the EASMOL bargaining unit.

25. The Board remains seized with respect to any questions which may arise from the implementation of this decision, as well as with respect to those other matters raised by the parties in their materials filed with the Board in this application.

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**1346-90-R; 1347-90-R; 11617-90-U; 1830-90-U** Teamsters Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Applicant v. **Steinberg Inc.** (Miracle Food Mart Division) and The Great Atlantic and Pacific Company of Canada Limited, Respondents v. Retail, Wholesale and Department Store Union, AFL CIO CLC, and its Local 414, Intervenor; R. Carniel et al, Complainants, v. Steinberg Inc. (Miracle Food Mart Division) and The Great Atlantic and Pacific Company of Canada Limited, Respondents; Teamsters Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Complainant v. Steinberg Inc. (Miracle Food Mart Division) and The Great Atlantic and Pacific Company of Canada Limited, Respondents.

**Duty to Bargain in Good Faith - Sale of a Business - Related Employer - Unfair Labour Practice - Teamsters' union and group of employees alleging sale of business and/or seeking related employer declaration in connection with transaction involving sale of retail MFM stores by Stein-**



berg to A&P and closure of Steinberg's distribution centre - Teamsters' union and group of employees alleging that structure of sale transaction motivated by anti-unionism against Teamsters, that A&P breached Act by refusing to hire Steinberg distribution centre employees because of their membership in Teamsters, and that Steinberg bargained in bad faith by representing that collective agreement concessions would ensure job security and then selling Ontario operations and closing distribution warehouse - Applications dismissed

**BEFORE:** *Susan Tacon*, Vice-Chair, and Board Members *G. O. Shamanski* and *R. R. Montague*.

**APPEARANCES:** *J. James Nyman* and *Robert McGibbon* for the applicant in Board Files 1346-90-R and 1347-90-R; *Paul Jarvis* for Steinberg Inc., *D. J. Shields* and *Tom Zakrzewski* for The Great Atlantic and Pacific Company of Canada Limited; *Bernard Hanson*, *Susan Ballantyne* and *Robert McKay* for the intervenor in Board Files 1346-90-R and 1347-90-R; *David Moore* and *Michael Battista* for the complainants in Board File 1617-90-U.

**DECISION OF SUSAN TACON, VICE-CHAIR, AND BOARD MEMBER G. O. SHAMANSKI;**  
October 2, 1995

1. The applications and complaints herein were filed prior to the amendments to the *Labour Relations Act* in 1991 and 1992. For convenience, references utilize the section numbers in effect prior to those amendments without specific notation. Board Files 1346-90-R and 1347-90-R are applications pursuant to section 63 and 1(4) of the Act, respectively. Board File 1617-90-U is a complaint pursuant to section 89 of the Act, alleging violation of sections 15, 64 and 66. Board File 1830-90-U is a complaint pursuant to section 89 of the Act, alleging violation of sections 15, 64, 66 and 70.

2. Also for convenience, the parties are referred to as: the "Teamsters" [Teamsters Local Union No. 419]; the "individual complainants" [R. Carniel et al.]; "Steinberg" [Steinberg Inc. (Miracle Food Mart Division)]; "A & P" [The Great Atlantic and Pacific Company of Canada Limited]; the "RWDSU" [Retail, Wholesale and Department Store Union and its Local 414]. Near the conclusion of the hearing, counsel for Steinberg noted that the name of the company was changed to 2841-1585 Quebec Inc.; however, for ease of reference, the name Steinberg is used throughout. Without objection, the RWDSU was added as an intervenor with respect to Board Files 1346-90-R and 1347-90-R. The RWDSU is the bargaining agent for the A & P distribution centre employees. The RWDSU and A & P are parties to separate collective agreements in respect of the full and part-time employees. Also near the conclusion of these proceedings, counsel for the RWDSU indicated that the proper name of the intervenor was: Retail Wholesale, Canada, Canadian Service Sector Division of the United Steelworkers of America, Locals 414, 422, 440, 448, 461, 483, 488, 1000, 1688. All parties were afforded the opportunity to fully participate in the complaints and applications, which were heard together.

3. The matters raised in the above complaints and applications are usefully sketched at this juncture. This is intended to give an overview of the issues and, hence, is somewhat simplified in its description. The matters are dealt with in more detail *infra*. In Board Files 1346-90-R and 1347-90-R, the Teamsters asserted that Steinberg sold its distribution business as well as its retail operation ("Miracle Food Mart stores") in the Province of Ontario to A & P, notwithstanding the fact that Steinberg closed its distribution centre in Ontario and the Miracle Food Mart stores were supplied through the existing A & P warehouses. It was argued that a sale of a business declaration should issue and, thereby, bind the respondent A & P to the Teamsters collective agreement. In the alternative, the Teamsters submitted that a section 1(4) application should be granted. The individual complainants supported these applications. Relief in addition to the declarations was



also sought by the Teamsters and the individual complainants. In Board File 1617-90-U, the individual complainants asserted that the structure of the sale transaction was motivated by an anti-union animus against the Teamsters and the individual complainants by reason of their membership in the Teamsters. Further, it was asserted that the respondent A & P breached the Act in refusing to hire or consider for employment the current Steinberg distribution centre employees because of their membership in the Teamsters. As against Steinberg, the individual complainants asserted that Steinberg had bargained in bad faith in concluding the collective agreement in March 1989 allegedly on representations of ensuring job security in return for concessions and then in selling the Ontario operations and closing the distribution warehouse in the Summer and Fall of 1990. The allegations in Board File 1830-90-U by the Teamsters mirror those in Board File No. 1617-90-U of the individual complainants.

4. It is necessary to briefly summarize the adjudication of these matters to date. On October 4, 1990, the Board (differently constituted, in part) made a number of rulings regarding scheduling and related matters, reflecting discussions and agreements amongst the parties. In March 1991, the Board dealt with a dispute regarding production of documents. In February 1992 [reported at [1992] OLRB Rep. Feb. 223], the Board also issued a ruling regarding the obligation of the respondent Steinberg to produce a witness to lead viva voce testimony to satisfy the statutory duty under section 64(13). By June 1992, there had been over twenty-five days of hearing and it appeared that the remaining dates scheduled in June would complete the evidence and submissions of the parties. However, at that time, counsel for the respondent Steinberg indicated that an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "C.C.A.A.") had been signed by Judge Denis of the Quebec Superior Court on May 31, 1992, the effect of which, it was asserted, was to stay the instant Board proceedings: see [1992] OLRB Rep. July 860. Following submissions, the Board ruled that the court order did operate to stay the instant proceedings as against Steinberg. The Board outlined the options available to the Teamsters and the individual complainants to await the expiration of the stay order, to obtain a modification of the stay order or to withdraw the complaints pursuant to section 89 against Steinberg and confirm that no relief was sought against Steinberg in the section 64 application. In the event, the resumption of the hearing awaited the expiration of the stay order. Because of the stay order and, when the hearing did reconvene, the illness of the final witness, these proceedings were not completed until late June 1994. In total, there were over thirty days of hearing.

5. The Board next sets out its factual findings. In doing so, the Board has weighed and assessed the testimony, in view of the usual factors relating to credibility of the witnesses, and in the context of the documentary evidence and what is reasonably probable in the circumstances. Twelve witnesses testified. As well, over one-hundred and sixty documents were filed in evidence. The Board has not attempted to recount the voluminous evidence in detail but has focused on those matters considered relevant to the various issues. With respect to credibility, the Board notes that the witnesses were testifying to matters which had occurred, in some cases, many months or years in the past and, in the Board's view, were giving their evidence to the best of their ability in the circumstances. Where necessary, the Board has resolved conflicts in the testimony, although such conflicts were relatively rare. Any specific comments regarding credibility are given at the appropriate point in the factual findings or analysis.

## FACTUAL FINDINGS

### Background

6. The respondents in these complaints and applications are Steinberg and A & P and concern the transaction between them which culminated in what is described as an asset sale and pur-

chase in July 1990. There is no dispute that a "sale" occurred between the parties with respect to a number of "stores" formerly operated by Steinberg and that A & P accepted its status as a successor employer with respect to the employees of those stores. What is in dispute, in part, is whether the warehouse operated by Steinberg was included in the "sale" and whether the deal was specifically structured to exclude the warehouse because of anti-Teamster animus. For convenience, the term "sale" is used in describing the transaction in July 1990 without implication as to the legal consequences of the transaction with respect to the applications and complaints until the Board expressly deals with those allegations *infra*. It should also be noted that the terms "warehouse" and "distribution centre" are used interchangeably, although the "distribution centre/warehouse" actually comprises several locations in the Toronto area for both A & P and Steinberg.

7. Steinberg had its origins as a family controlled business in Quebec. Prior to July 1989, the corporation continued to be controlled by the Steinberg family but had expanded to include supermarket chains in Quebec and Ontario under various banners, considerable real estate holdings and investments in other food related operations (such as, Valdi, Price Club Canada, Lantic Industries, and Smitty's in the United States). This thumbnail description is not intended to capture the extensive and diversified components of the Steinberg operations. The retail food operation had been unionized for many years and collective agreements were negotiated and renewed.

8. The Ontario retail food operation included about seventy retail grocery supermarkets in its Miracle Food Mart Division ("MFM") under the banners of Miracle, Ultra Mart and Basics. The employees in the stores, both in Ontario and Quebec, were represented by various locals of the United Food & Commercial Workers ("UFCW"). Steinberg utilized four distribution centres in the Toronto area to service the stores, although the major centre was located at 75 Rexdale Blvd. Steinberg also operated a fleet of tractors and trailers to deliver product to the stores. In Ontario, there were approximately 10,000 employees represented by the UFCW in the stores; apparently, the UFCW also represented roughly 45 employees in maintenance.

9. The Teamsters, as noted, represented the approximately 375 warehouse employees, including the roughly 100 drivers of the delivery fleet but excluding the maintenance employees. The distribution centre employees bargained independently of those in the stores. The distribution centres were physically separate from the stores and the head office at 65 Rexdale. The reporting lines for the distribution centres also differed from those at head office and the stores.

10. A & P also operates a retail supermarket chain in Ontario. The Canadian corporation is controlled, as a wholly-owned subsidiary, through its American parent which is, in turn, controlled by the Tengelmann Group of Germany. Prior to the transaction in question, A & P operated over two hundred stores under two banners (A & P and Dominion). The Dominion stores were acquired in 1985. The retail supermarket employees of A & P (and of the acquired Dominion stores) were represented by the UFCW, the RWDSU and, at some locations, by the United Steelworkers of America. The stores were serviced through distribution centres located at The West Mall and Vickers Road. The warehouse employees were also represented by the RWDSU (Local 414) in full and part-time bargaining units. At the relevant time, the approximate number of employees in those units was 500 and 120, respectively. Prior to the instant transaction, the work force totalled roughly 21,000 employees. It should be noted that, in the United States, A & P also has bargaining relationships with the Teamsters.

11. It is useful to briefly describe the distribution centres of A & P. The West Mall provided roughly 1,000,000 sq. ft. of space, including dry grocery, frozen food and a truck court. At Vickers Road, there was over 160,000 sq. ft. for produce, dairy and meat. As well, as a result of the Dominion purchase and resulting centralization of warehouse facilities, A & P had an additional



300,000 sq. ft. of warehouse space at its head office. That space was not being utilized as a warehouse facility and was subject to a short-term lease.

12. A & P, unlike Steinberg, does not deliver product to the distribution centres from the suppliers and from the distribution centres to the stores using its own fleet of trucks and trailers. Rather, that function is contracted out to Wilson Transport or suppliers deliver directly to the distribution centres and/or the stores. Product may also be delivered directly to stores by wholesalers (such as the Oshawa Group) rather than individual suppliers. The only departure from this format since at least 1987 was for the year following the acquisition of the Dominion stores. For that period, the Dominion fleet was retained but then was sold and the drivers transferred into the warehouse in accordance with bargaining unit seniority.

13. Prior to the sale in July 1990, A & P and Steinberg operated competing retail supermarket chains in Ontario. As between the two companies, there was no common ownership, directors, management or financial control. As a result of the sale, while a few management personnel associated with MFM were offered positions with A & P, there continued to be no common ownership, directors, management or financial control. Nor were the operations of A & P and Steinberg prior or subsequent to the sale inter-related. For a brief period proximate to the scheduled closing, there was a transition team intended to facilitate completion of the sale. Thereafter, A & P acquired the majority of the retail supermarket stores operated by the MFM division of Steinberg in Ontario and operated those stores as part of its own business. The transaction included an agreement that Trillium Meats (a division of Steinberg) continue to supply meat and deli products to those stores acquired by A & P for a defined period of time. That arrangement was terminated in January 1992. A & P was never involved in the operation, management or ownership of Steinberg's warehouse operations prior to the sale. Nor was A & P involved in the management or operation of Trillium Meats.

14. Given that the allegations commence with the negotiations in 1988 between Steinberg and the Teamsters, it is appropriate to begin the narrative in late 1987. The events follow a chronological order but within functional headings and are cross-referenced.

15. It is useful to here note the names and positions of various individuals involved in the events as participants and/or witnesses. The list is not exhaustive but serves to set the "cast of characters". With respect to Steinberg, the relevant names include: Irving Ludmer, president and CEO; Alain Bilodeau, group vice-president, human resources (later, senior vice-president, corporate affairs following the Socanav take-over); Pierre Guilbault, (senior vice-president, finance, comptroller and treasurer). Michel Gaucher, president of Socanav, acquired the controlling interest in the Steinberg empire in July 1989 in a highly leveraged buy-out. For A & P, the main figures consisted of: James Wood, Chairman and CEO (U.S.); Robert Ulrich, senior vice-president and corporate counsel (U.S.); John Dunne, president and CEO (Can.); Nigel Byars, executive vice-president and chief financial officer; Brian Burden, assistant director of warehousing and distribution. John Peardon transferred to A & P as a result of the sale; he held the position of director of labour relations, first with Steinberg and then at A & P.

#### Final Offer Selection and Labour Peace

16. The Steinberg empire was founded by "Sam" Steinberg. By late 1987, his family was feuding over the continued operation of the business. The family dissension was widely reported in the newspapers and was the topic of considerable speculation with respect to the possible impact on the continued operations of the firm. As well, the retail supermarket operation was in some difficulty. At that point the labour costs in the Quebec operations were appreciably higher than their



major competitors and the company had been subject to a series of costly strikes and labour unrest. Of particular note was a month-long strike in the Montreal warehouse in September 1987.

17. At this point, two initiatives were launched which operated in parallel for a time. On the one hand, in early 1988, the Steinberg board of directors concluded that it was "in the interest of all shareholders to seek firm offers from third parties to acquire all of the equity shares of the Corporation and to consider other possible methods of maximizing shareholder values". Those offers and any other alternatives would be compared with the prospects of continuing the operational status quo. The investment firm of McLeod Young Weir was retained to solicit offers. There had been an earlier unsolicited offer from the Oxdon consortium which had been rejected by the Steinberg board and which had prompted a law suit by one of the Steinberg daughters. That crisis was resolved by the retaining of McLeod Young Weir. On the other hand, in late 1987, Irving Ludmer, president and CEO, charged Alain Bilodeau, group vice-president, human resources, with devising a strategy to enable Ludmer to convince the Steinberg board to continue operations.
18. The company had to address the wage and benefit discrepancy and productivity figures to "level the playing field" with its competitors. But also, of critical import in Bilodeau's view, was the acceptance by the various unions of a collective agreement which provided for long term labour peace through the use of final offer selection ("FOS") if negotiations failed to produce an agreement. That is, the unions would give up the right to strike in return for arbitrated settlements if the parties were unable to agree. Both Bilodeau and Ludmer viewed the acceptance of the concept as critical to turning around the company's fortunes in the retail supermarket business. Both actively sought to persuade the unions that such an approach to labour relations was in their common interest in that, with labour peace, Ludmer could convince the Steinberg board to continue the company as a "going concern" and the unions would thereby preserve jobs for their members. FOS was regarded as a mechanism to secure labour peace for a lengthy period. Ludmer and Bilodeau originally conceived of the duration of the "peace" as ten years. The deal was described as "nothing less than a treaty, a pact that will guarantee to both of us [Steinberg and the unions] a fair labour peace for at least ten (10) years to come".
19. By late 1987, Bilodeau had met with the presidents of the various UFCW locals to discuss the concept of labour peace. The UFCW represented the overwhelming majority of Steinberg's 25,000 employees in the retail supermarket operation in Ontario and Quebec. Without the support of the UFCW, there was no future for the concept. Negotiations for the renewal of their collective agreements occurred in the spring of 1988. Final offer selection and labour peace were included in the company's proposals. The negotiations were carried out in the open knowledge that the company was actively considering the sale of the retail supermarket operation. Steinberg emphasized in bargaining that the FOS concept and improved competitiveness would enable the company to continue as a "going concern". Newspaper articles in that period noted the negotiations and possible sale; Ludmer was quoted as stating that, absent an agreement on FOS/labour peace, it was likely that the company would be sold off piece-meal.
20. Bill Hanley, president of UFCW, Locals 175/633, indicated to Ludmer in a letter dated April 6, 1988, their willingness to address the company's concerns with long-term management-labour peace and operational flexibility. He cautioned that any resulting agreement would require ratification by the membership. Further, the union was insisting that the provincial bargaining unit structure must be maintained and the FOS period be five years.
21. Bilodeau did not contact the Teamsters in Ontario regarding FOS and labour peace until February 1988. The trigger for raising the issue was a wildcat strike at the distribution centre. The chief steward had been fired as a result of his participation in the wildcat strike. Frank Gri-

maldi, local president and business agent, contacted Ludmer seeking a meeting to reinstate the chief steward. In that context, Ludmer informed Grimaldi in a telephone conversation that the company was "in play" and that Bilodeau would be discussing an option to retain the operational status quo. That matter was further elaborated at a meeting in Montreal where Ludmer reiterated to Grimaldi (and another union official) that the Steinberg board was actively seeking offers but that Ludmer was hoping to demonstrate to the Steinberg board that it was preferable to continue operations. Should Ludmer fail, the Teamsters' 320 jobs were at risk. Grimaldi indicated that he was prepared to be flexible to protect the jobs.

22. On February 24, 1988, Bilodeau forwarded to Grimaldi a copy of the FOS language already proposed to the UFCW. As the Teamsters negotiations were not scheduled to commence until the end of the summer, the proposal was presented outside of formal negotiations. At a meeting in March 1988, Grimaldi indicated to Bilodeau that the FOS procedure, in principle, was acceptable. Grimaldi pressed his own concerns regarding negotiations. Grimaldi indicated that he needed "a buck and a buck" on the wages side and wanted to reschedule the expiry of the new collective agreement to May 1991 rather than November 1990 so that the Steinberg bargaining would follow the conclusion of the Oshawa Foods negotiations. Informally, Bilodeau indicated that Grimaldi's objectives would be acceptable. In these conversations, there was no mention of future job guarantees or assurances the company would not be sold if FOS was adopted. During this period, Grimaldi also sought assurances regarding the employee's pension plan if the company was sold; Ludmer replied in writing that Steinberg was seeking actuarial advice and intended to comply with all legal requirements.

23. In March 1988, in a letter to union members, Grimaldi, in part, commented on the status of Steinberg. It was noted that the company was for sale and the risks to the union if Steinberg was sold "piece by piece".

24. In April 1988, Grimaldi sent a telegram to Bilodeau which reiterated the Teamsters' cooperation in an attempt to keep the company together. That telegram read:

"Teamsters Local 419 will full co-operate with Steinbergs in an attempt to keep the company together. We are prepared to negotiate a package which includes final offer selection. This will apply only to Steinbergs, and not to any subsequent buyer. we would also expect a commitment from the company on job security as a result of these negotiations. Trust this is satisfactory."

25. There was no dispute between Grimaldi and Bilodeau that the company's response at this point to Grimaldi's concerns gave no such assurances with respect to job security or the caveat sought regarding a subsequent buyer. Grimaldi, in writing, subsequently accepted the company's position, subject to membership ratification at the appropriate time. Grimaldi agreed to FOS as an alternative to strikes where the parties could not negotiate a settlement; the period of labour peace was to be that agreed upon by the store employees. Further, should Trillium Meat discontinue the FOS process and a strike ensue, the warehouse employees would not refuse to cross a picket line.

26. In May 1988, the proposed collective agreements were placed before the UFCW membership in Ontario and Quebec. Written communiques from Ludmer emphasized the seriousness of the situation but also the company's hope that, with ratification of the package which included FOS, labour peace and productivity gains, Steinberg could become "once again, Canada's pre-eminent food retailer". The UFCW locals in Ontario ratified the proposed collective agreement; the Quebec locals rejected the proposal. Newspaper articles reported extensively on the rejection and the likely impact on the future of Steinberg. The company commenced closing some stores in Quebec. After further negotiations which included the intercession of the Quebec Premier's Office, a collective agreement which incorporated FOS and labour peace was accepted in June 1988.



27. In July 1988, the Steinberg board of directors adopted a motion to continue its retail supermarket operation and end negotiations with third parties concerning the sale, in some form, of those operations. It appeared Ludmer had convinced the Steinberg board, as he had hoped to do, to continue the company as a "going concern". A Steinberg press release noted, in part,

"According to Mr. Ludmer, 'the Board believes it is in the Company's best interest to maintain its Canadian supermarket operations considering that the large majority of Steinberg's unionized food employees, in Quebec and Ontario, ratified agreements that will allow the Company to achieve its long-term strategic objectives with improved competitiveness and a lengthy labour peace'."

28. Again, the matter received considerable press coverage. Ludmer was quoted as saying the objective was "to stay in business for at least another 100 years". Several articles bore headlines to the effect that the acceptance of the collective agreements meant that the stores would not be sold. However, Ludmer was also quoted, with respect to the company's rejection of the Oxdon bid earlier that year (for \$980 million): "The family decided not to tender the control block [of voting shares]...If somebody was to come in and make an offer that was potentially higher, the family would again have to decide whether it would accept that offer or not."

29. It is useful to note here that, while the solicitation of offers for the Canadian retail supermarket operation was ended in July, the Steinberg board, in September 1988, did decide to pursue the possible sale of Smitty's (an American supermarket chain) and, to that end, solicited offers. Nothing came of those efforts prior to the take-over by Socanav, as noted below.

30. At that point, the UFCW collective agreements had been resolved with the inclusion of FOS and labour peace. In June, in what was described as a "straw vote", the Teamsters rejected the FOS and labour peace language. Following that vote, Grimaldi did not retract his agreement, in principle, with the FOS concept. As noted, Grimaldi had sought, without success, assurances regarding job security and "subsequent buyer" language. Grimaldi had been given positive indications with respect to his agenda of "a buck and a buck" and a change to the duration of the collective agreement so that would expire after the Oshawa Group negotiations.

31. A pre-bargaining meeting was held in late August 1988. Grimaldi reiterated his agreement with FOS and labour peace provided the duration of the agreement and wages were as he wished. At a later meeting, Peardon confirmed this framework and raised a question regarding flexibility with regard to part-time employees. In this period, there is no suggestion that there were discussions or assurances regarding job guarantees or that the company would not again be put up for sale.

32. Several formal bargaining sessions were held in September 1988. The negotiations or the provisions in the resulting collective agreement need not be outlined in any detail. Peardon headed the Steinberg team. Grimaldi was chief spokesperson for the Teamsters. Peardon and Grimaldi testified. The union negotiating team included Brian Payne, John Ricchio and Michael Ursini. The testimony of Peardon and Grimaldi did not differ significantly with respect to the negotiations. The Board prefers their testimony to that of Payne, Ricchio Ursini whose recollections, in the Board's view, are less accurate and conflict with one another. Peardon explained the company's intention to expand the warehouse business into wholesaling so as to service other stores, such as Valdi, Beckers and Macs, as well as the Steinberg locations. If successful, the resulting increased volumes would require more employees, particularly part-timers to handle peak periods. The efforts of Steinberg's in that regard are noted infra.

33. The parties successfully concluded their negotiation on October 18, 1988 after a number of bargaining sessions. The resulting collective agreement was ratified by the membership with a



large majority in support of the deal. The FOS/labour peace provisions were included as articles 18 and 19. If the parties were unable to negotiate a renewal agreement, their dispute would be submitted to a consensual arbitration panel which would select the position of one of the parties, without modification. The criteria for choice as between the two positions consisted of the current collective agreement and the working conditions prevailing among the competition in the region concerned. Article 19 contained a provision guaranteeing industrial peace for a period of 5 1/2 years; any impasses in bargaining were to be resolved through FOS. The "buck and a buck" that Grimaldi wanted was agreed to by the company as was the expiry date of May 1991. That agreement did not include job guarantees or increased severance payments, despite Grimaldi's efforts.

34. Peardon's notes of the negotiations were tendered in evidence. It is necessary, at this juncture, only to focus on the severance pay issue. The union's initial proposal sought severance pay at three times the *Employment Standards Act* ("E.S.A.") rate. The company rejected that proposal. The union's second proposal, on September 21, 1988, sought \$1,000 per year of service in severance. Union witnesses testified that they proposed, during bargaining, a "bona shida" payment. The term apparently refers to an Italian severance system which is extremely costly. Peardon rejected the concept and the matter was quickly dropped. On October 12, the union maintained its position regarding severance; the company continued to resist. Then, in its offer on October 18, the union withdrew its position on severance. In the context of the discussion regarding job security, Peardon pointed to his thirty year pin and commented to the effect that, if the company was successful in expanding into the wholesale line, the future looked bright and everyone would be around for another thirty years; there would be additions to the warehouse personnel, not job losses. The Board does not accept as credible testimony that Peardon promised life-time job security.

35. In the months following the conclusion of negotiations, the company did proceed with a number of steps intended to facilitate a wholesaling operation. For example, an inventory billing system ("N.I.B.S.") which was begun in late 1988 was continued to completion in March 1990. A vacuum system was installed in the warehouse, orders were printed at 75 Rexdale (rather than at head office) and inventory clerks at 75 Rexdale focused on wholesaling duties. As well, new refrigeration was installed at the distribution centre and the produce warehouse facilities improved. On a broader level, Steinberg purchased several wholesale operations in Quebec and entered negotiations to acquire another wholesaler, the Knetchel Group.

#### Negotiations with A & P

36. While this section focuses on the negotiations between A & P and Steinberg, it should be noted that other parties were interested in acquiring parts of the Steinberg empire and were pursuing their own enquiries during this period. Those offers are referred to at appropriate points. Some of the approaches were to A & P directly, in an effort to explore possibilities for a joint venture.

37. In connection with the retaining of McLeod Young Weir to solicit offers in 1988, A & P received an information package. A & P was interested in acquiring Steinberg's retail store operations in Ontario. The Steinberg store locations would increase A & P's presence in Ontario and provide a third banner for its operations. Additionally, given the excess capacity at the distribution centres, there were opportunities for "synergies" in that area as well as in administration. Those synergies added to the attractiveness of the business opportunity. Early on, A & P was aware of the bargaining agents with respect to the store and distribution centre employees and that the head office employees were not unionized. A & P made an initial offer to Steinberg in March 1988. That offer excluded Steinberg's distribution centres and transportation operations. Byars (executive

vice-president and chief financial officer for A & P Canada) testified that A & P was not interested in acquiring the distribution or transportation operations as A & P had sufficient existing warehouse capacity to serve the expected increase in volume and A & P, as noted earlier, did not maintain its own distribution fleet. That first offer was rejected by Steinberg.

38. The documentary evidence before the Board included memos and handwritten notes from the various A & P officers involved in the prospective acquisition, termed "Project 100". The internal documents explore a variety of options with respect to the offers to Steinberg and address the potential attractions or "synergies" of the acquisition. In that regard, the additional location (and third competitive vehicle) and the excess capacity at the West Mall are noted as the most significant factors. It is not necessary to deal with those documents in detail; relevant aspects are noted *infra*. It is appropriate to note here that, at one point in the internal documents, with respect to the stores, A & P was prepared to retain bargaining unit employees but wished to be selective about non-bargaining unit employees with a 90 day "turn back" provision if thought unsuitable.

39. One other document should be noted at this point. In 1988, in examining the McLeod Young Weir offering circular, Byars jotted down his thoughts as he proceeded through the material, assessing the various negatives of any deal to acquire part of the Steinberg Ontario operation. The document obliquely refers to the Teamsters contract under "other" after an extensive listing under "rents" and "equipment". The "other" category itself notes that the meat operation is non-economic and has union bumping rights to the stores and the office facility is redundant, as is the grocery warehouse. The union bumping rights reference is not to the Teamsters. Byars testified that, in referring to the Teamsters contract as a negative, he was concerned about the fact that the RWDSU scope clause covered the same geographic area.

40. Senior executives of A & P and Steinberg met in Montreal on May 5, 1988 to discuss their respective positions. Attending on behalf of A & P (U.S.) were James Wood, James Rowe (vice chairman), and Robert Ulrich; on behalf of A & P (Canada), John Dunne (president and CEO), Nigel Byars; on behalf of Steinberg, Irving Ludmer, Arnold Steinberg (executive vice-president, finance) and Bill Cleman (president, Ivanhoe (real estate company)). The negotiations throughout, until the ultimate asset purchase agreement was concluded, were essentially conducted by officials from the American parent of A & P.

41. An amended proposal was submitted to Steinberg. In addition to the purchase of the retail stores, A & P offered to lease Steinberg's warehouse premises at 75 Rexdale for up to one year. Byars characterized that provision as "dead rent". That is, the offer was intended to improve the attractiveness of A & P's offer but Steinberg would be responsible for the operation and maintenance of the facility and all concomitant expenses. It was expressly provided that A & P would assume no responsibility for severance or termination pay for any Steinberg employees at the warehouse nor would A & P have any obligation to employ such persons. This proposal, as well, was not acceptable to Steinberg.

42. During this period, A & P representatives met with senior officers of Investment Canada and the Competition Bureau to discuss the impact of a possible deal and formed the view that the necessary approvals would be forthcoming.

43. A & P continued its efforts to reach a deal. A & P and another Canadian firm (which the parties agreed should remain unnamed) then submitted a joint proposal in late May 1988 for Steinberg's retail supermarket operations in both Ontario and Quebec, including the warehouse operations. That offer, dated May 24, 1988, was characterized as an expression of intent which did not create any binding obligations or agreements. The employees at the store locations and the



warehouses were to be offered employment by the “purchaser”. Office and administrative staff would be reviewed and those necessary and suitable would be retained by the “purchaser”.

44. Under that offer, as between A & P and the Canadian firm, their respective positions were as follows. The Ontario retail stores would be divided between the Canadian firm and A & P (60:40). The Canadian firm would acquire the warehouse and office facilities in Ontario. The meat processing facilities and operations would be subject to a 50:50 partnership as a separate operation. In Quebec, the store locations would be divided between A & P and the Canadian firm (60:40). A & P would acquire the Quebec warehouse and office facilities. Byars testified that, if retail stores in Quebec were acquired, A & P would need distribution facilities there to service the stores. The Canadian firm was to assume responsibility for offering employment to the current employees of Steinberg at the distribution centres subject to a 180 day turn back provision. Employees working in the stores would be engaged by the relevant purchaser and, after 180 days, the purchaser would be liable for termination costs. The proposal also stipulated that unionized employees in Ontario and Quebec were to be separated into separate bargaining units in accordance with the division of store locations and facilities.

45. This offer, too, was not accepted by Steinberg. At that point, negotiations between A & P and Steinberg ended. Between June 1988 and July 1989, there were no further discussions between the parties. As noted above, the Steinberg board had taken the company “out of play” following the conclusion of collective agreements with the UFCW in Ontario and Quebec agreeing to FOS and labour peace.

46. While the Steinberg board ended the solicitation process prior to the commencement of formal bargaining with the Teamsters, there was an unsolicited bid from the Oxdon consortium in March 1989. This offer, to purchase the shares in the entire Steinberg company, was rejected by the Steinberg board of directors in April 1989. A further unsolicited bid from Oxdon received in June 1989 was likewise rejected.

47. In July 1989, Michel Gaucher, president of Socanav Inc. (“Socanav”), acquired an option (a “lock-up” agreement) to purchase a 52% controlling interest in Steinberg from the Steinberg family. Gaucher’s approach to the family was unsolicited. Gaucher’s bid for control was supported by the Caisse de Depot et Placement du Quebec (“Caisse”). The take-over bid documents sought purchase of common shares, Class A shares and convertible fourth preferred shares, Series 1 of Steinberg. The offering circular indicated that Socanav, if successful, intended to conduct a detailed review of the company and its subsidiaries. Socanav’s stated intention was to continue, as a going concern, the retail and wholesale food business but, after review, might dispose of other assets. Pursuant to the take-over bid, the Caisse would purchase most of the real estate assets.

48. At the time of the take-over bid, Oxdon was also involved in the battle to acquire Steinberg. Indeed, it appeared that Loblaws was supporting the Oxdon bid. Newspaper articles reported that the UFCW and the Quebec Federation of Labour backed the Oxdon bid as well. The Steinberg board, at one point, appeared poised to accept the Oxdon bid if Socanav did not submit a higher bid by July 31, 1989. In the event, Socanav did submit a bid worth \$1.3 billion, conditional upon specified share levels being tendered. That level was reached and, in August 1989, the Socanav take-over was successful.

49. In July, prior to the formal take-over, A & P, through Byars, contacted Gaucher to express an interest in the Ontario operations. An internal A & P memo indicated that A & P had expressed flexibility in terms of discussing a mutually beneficial transaction, although their preference would be to acquire the Ontario retail store operations, either in total or, better yet, on a hand-picked basis. A & P was advised by Gaucher that he planned on pursuing a public offering



and intended to keep the food operation intact. That rebuff ended the involvement of A & P at that time.

50. Gaucher's acquisition of the controlling interest of Steinberg was at a high price. The take-over was highly financed through the Caisse and various other financial institutions. As Pierre Guilbault testified, the deal was the highest leveraged buy-out in Canadian history. Following the take-over, while the financial results for the fiscal year end and the first quarter for Steinberg and its subsidiaries showed improved profitability and cash flow, Socanav commenced selling off assets to meet its debt load. In August 1989, Socanav authorized the sale of assets related to the remaining real estate operations (Ivanhoe, principally), 50% interest in Lantic Sugar and Price Club and assets related to Smitty's food operations in the United States. During 1990, assets related to the real estate operations, Lantic Sugar and part of the restaurant operation were sold. Smitty's did not attract interest at anywhere near the expected level. Byars testified that, in his view at that point, it was only a matter of time before the debt obligations incurred in the leveraged buy-out would force the disposition of the Ontario operations. His statement proved prophetic.

51. By the turn of the year, it was realized that the sale of other Steinberg assets would not generate sufficient monies to sufficiently reduce Socanav's debt. Gaucher was under significant and increasing pressure to dispose of further assets to satisfy creditors and decided to sell the MFM operations in Ontario and the 50% interest of Steinberg in Price Club. Newspaper articles at the time noted the financial pressures on Socanav by creditors flowing from the leveraged buy-out.

52. Senior executives from A & P and Socanav met in Montreal in February 1990; A & P's position that it did not wish to acquire the warehouse or transportation operations was reiterated. Because of Gaucher's confidentiality concerns, the negotiations were handled on behalf of A & P through its U.S. parent by James Wood, CEO (U.S.) and Robert Ulrich, senior vice-president and corporate counsel (U.S.); the Canadian officers of A & P were excluded from the meeting. Wood and Gaucher met privately for a brief period. On their return, it appeared a deal was reached whereby A & P agreed to a formula for the sale price of three times book value, as sought by Socanav, and A & P would not purchase the distribution, transportation and maintenance operations. A & P did agree to offer employment to (and/or bear the termination costs of) the head office employees; A & P did not assume the head office facility of Steinberg. Approximately one-half the office staff was ultimately retained by A & P.

53. On the basis of the agreement in principle, the parties made the necessary filings with Investment Canada and the Competition Bureau. At a meeting with Investment Canada in early April, A & P indicated that the transaction would generate synergies in the warehouses and distribution operations and it was anticipated that the banner would continue to be operated separately, given their prior experience with the Dominion stores acquisition. A & P also indicated that, with respect to the Steinberg warehouses, the company would be willing to receive applications for 75 to 100 employees to accommodate the additional volume. In response to other questions, A & P stated that the supplier relationships would not be jeopardized by the transaction and responded to questions regarding market share. In its filing with Investment Canada in this time period, A & P indicated that the transaction would involve 79 retail supermarkets in Ontario but not the warehouse facility. The purchase price was anticipated at approximately \$360 million; employment was to be offered to the stores' employees and head office management and clerical staff and, in respect of the unionized employees in the stores, A & P would be a successor employer. A & P indicated that the existing supply arrangements would continue and some systems economies would result in administration and distribution of products. A & P also undertook due diligence investigations in this period.

54. A further meeting between the principals of A & P and Steinberg was convened in March 1990; A & P's position with respect to the warehouse and transportation operations did not change. In early April, yet another meeting was held. In April, Wood responded to Gaucher outlining A & P's approach to the cost of the deal which was based on a multiple of book values and a multiple of earnings. It is useful to quote an excerpt from that April 2, 1990 document:

"Essentially A & P's price for Ontario, we based upon the multiple of book values and a multiple of earnings.

With the existence of possible synergy benefits and the value of adding to an existing A & P marketplace, a multiple of post tax earnings of twenty was the fundamental price ingredient.

On the same basis a revised price for the assets of Ontario in the light of the more actual figures would be more appropriate in the range of \$250 million, plus working capital with A & P assuming the liability for the office and the administrative organization as before.

If negotiations are attractive to you at this level, let's both talk tomorrow morning, Tuesday, and with the firm information now available, we would proceed to a very quick completion of the purchase."

55. Concurrently with the direct negotiations, A & P were studying the impact of the transaction on their operations. For example, an internal document dated April 17, 1990 noted a number of matters. The most urgent requirement for the grocery operation at the West Mall was for additional racking to increase significantly the cube utilization of the facility. The hiring and training of new employees was to commence four to six weeks prior to the acquisition to ensure the availability of a trained work force to handle all stores on closing and to complete the transfer of inventory within ninety days of commencing shipment to the new stores from the West Mall. The frozen food was already at 100% capacity but could be reconfigured and additional racking would increase capacity provided the inventory level was kept low. The long term resolution required expansion of existing facilities into areas currently devoted to other goods or relocation to another warehouse. The perishable produce operation anticipated a third shift to handle increased volume; again the training Period was anticipated at four to six weeks. An integration team was suggested to manage the restructuring, with specified persons assigned certain responsibilities.

56. Another memorandum dated March 29, 1990 should be noted. The witnesses could not identify the author of the memo, which addresses "alternative labour strategies". Advantages and disadvantages of offering employment to Steinberg warehouse employees are discussed. Under advantages, are summarized: if offers are based on selection and not seniority (and subject to a probationary period), the result would be a trained, competent full-time complement; the hirings would assist the acquisition process for negotiators and transfer of produce to A & P's warehouses; avoidance of potential labour board/human rights complaints and negative impact on corporate image if employment is not offered. Disadvantages noted were: introduction of a third culture into the warehouse; maintenance of pay rates and benefits which could negatively impact on current and new employees; severance implications if the probationary period was unsuccessful; a more expensive collective agreement could affect expectations in bargaining and sway the balance of power in the work force. The recommendation was to support offering employment on whatever terms are set and concluded the advantages outweighed the disadvantages. The company would continue to have the most favourable labour contract in the area for food distributors and have eliminated the least favourable collective agreement.

57. A & P and Steinberg could not reach agreement on the overall price. Throughout these discussions, Socanav sought to include the warehouse equipment in the asset sale to A & P; that inclusion would have added significantly to the purchase price. A & P continued to resist the pur-



chase of those assets or the assumption of any obligations to employ Steinberg warehouse personnel. The various drafts of the transaction in March and April, as well as internal documents, reflect the negotiations in progress between the parties and their differing views of the scope of the desired transaction. Documents also reflect consideration of the form of the transaction, from taxation and financing viewpoints, that is, whether it would be preferable to structure an asset purchase agreement, stock purchase format or otherwise. The agreement in principle fell apart.

58. Once more, there was a lull in the negotiations with A & P. In the interim, Steinberg retained Merrill Lynch to solicit other offers for the Ontario operations. The Merrill Lynch document described the Steinberg retail operation in Ontario in some detail. Of interest are the comments regarding the "state-of-the-art" inventory and billing computer system introduced in the warehouses and the capital improvements in those facilities, on the order of \$3 million in renovations to the produce/perishable warehouse in June 1989. The brochure noted that the company had begun to explore opportunities to enhance profitability through franchising and wholesaling. The leased transportation fleet was described, including the recent replacement of equipment and the fact that the company aggressively sought "backhaul" opportunities to offset transportation costs. Other matters of note were the Inventory Control and Billing Systems which could be used in both retailing and warehousing operations.

59. In April, Steinberg documents indicated that, by the end of July 1990, the company had to raise \$350 million from the disposition of various assets (including Lantic Sugar for \$110 million; the restaurant group for \$21 or \$22 million, etc.) The 1991 Socanav annual report indicated that the company was required to fulfil its commitment to the bank syndicate to repay over a very short term \$435 million of the \$558 million credit facility which was granted at the time of the acquisition in August 1989. In short, Socanav was facing demands from its creditors which could only be satisfied with the disposition of the retail supermarket operations in Ontario.

60. In that context, the negotiations between A & P and Steinberg resumed in July 1990. Those discussions did culminate in an asset sale and purchase agreement. Although the resumption of discussions commenced with Socanav continuing to push the inclusion of the warehouse assets in the book value for the purpose of calculating the purchase price, ultimately, A & P's position was accepted. The deal was constructed as an asset purchase agreement with a closing date of October 20, 1990.

61. Subsequent to the deal but prior to closing, Steinberg and A & P created a transition team to facilitate the finalization of the transaction. As well, A & P established an integration team which met regularly to ensure a smooth integration of the acquisition into existing A & P operations; that team dealt with the myriad aspects of the integration, from physical logistics to personnel and organization.

#### The Asset Purchase Agreement

62. It is necessary to only briefly summarize the complex asset sale and purchase agreement. The formal agreement, dated July 20, 1990 and sixty-two pages in length (plus attached schedules), refers in the original document and the amending agreement (of October 22, 1990) to the following parties: A & P, Steinberg, Steinberg Equipment Leasing Inc., New Miracle Food Mart Inc. and A & P Drug Mart Limited. For convenience, the references are to "A & P" as purchaser and "Steinberg" as vendor. The complex form of the document and the additional corporate structures reflected concerns regarding the tax impact of the transaction and such like.

63. The asset purchase agreement covered such matters as definitions, the purchase of assets and price, representations and warranties of vendor and purchaser, the interim period



before closing, the closing itself, business matters, indemnification and non-merger and general matters. The purchase price was over \$235,500,000, including monies in respect of inventory, cash on hand in the stores, adjustments on the settlement date and subsequent adjustments. Briefly described, A & P acquired the leasehold interests (and fixtures and improvements), store equipment, registered and unregistered trade marks, and goodwill in respect of specified stores, approximately seventy in total. That comprised virtually all of the Steinberg retail locations in Ontario with the exception of some stores in the Ottawa area. The transaction was subject to the approval of Investment Canada and other government bodies.

64. “Business” was defined as follows:

“Business” means the retail supermarket and pharmacy business currently carried on by Steinberg and Oak through the Stores and the Office to the extent that the business carried on at the Office relates directly to the business carried on through the Stores or to the expansion and development of the retail supermarket and pharmacy business in the Territory, but excluding the maintenance, warehouse and transportation functions carried out at the Warehouses.

65. The term “assets” was defined in the document to expressly exclude assets which were situated at the warehouse locations and the truck and trailer fleet. No assets were purchased from the distribution centres. The agreement provided A & P with an opportunity to review the truck and tractor leases and to assume those leases. Following that review, by letter dated August 17, 1990, A & P determined that it wished to assume the automobile leases identified in the relevant schedule to the purchase agreement but not to assume the leases with respect to the trucks, tractors and trailers or the computer leases, in the relevant schedules to the purchase agreement. At one point, A & P indicated an interest in the assumption of the computer leases for a defined period, although that was not provided for in the transaction; the eventual result of that issue was not here relevant. A & P assumed the lease with respect to the head office of Steinberg at 65 Rexdale for a period of one year.

66. Consistent with these definitions, the term “employees” expressly excluded “unionized employees performing maintenance, warehouse and transportation functions”. That is, A & P did employ those persons working in the stores which were acquired as a result of the asset purchase and, as noted *infra*, those employees at head office. With respect to those employees in the stores who were unionized, A & P accepted its role as successor employer and the terms and conditions of the collective agreements in force were continued. The non-union employees were retained on substantially the terms and conditions of employment in force at the time of the transaction. In total, approximately 8,000 unionized and non-unionized employees were hired from Steinberg’s workforce. A & P did not assume any obligation to hire the warehouse, transportation and maintenance employees.

67. Between July 10, 1990 and closing, Steinberg was obligated to carry on the business in the normal course, consistent with past practice, and to use its “best efforts” to preserve the good will of suppliers, customers and other related businesses. Byars testified that A & P had to purchase the existing inventory to protect the value of the stores and retain the goodwill of the customers. That is, unless the stores remained fully stocked, customers would be lost as the high velocity items were depleted and were not replaced by Steinberg. Further, to facilitate the delivery of the inventory on closing, orders were placed with Steinberg to be delivered to the A & P distribution centre; all inventory was to be transferred within a specified period following the closing date. A & P assumed responsibility for the product at the point of loading onto Wilson Transport trailers.

68. A & P did agree to transfer the individuals working at Steinberg head office at 65 Rex-

dale, including buyers, replenishment clerks, account and control clerks to A & P's head office. The reporting structures for those employees differed from those in the Steinberg distribution centre and, functionally, those persons were not part of the distribution function. The functions performed by the employees in those classifications would have been carried out even if Steinberg did not operate a distribution centre but had all product shipped directly from suppliers to the stores. Apparently, roughly half of those transferred employees were subsequently terminated; the obligation for severance was assumed by A & P.

69. The amending agreement, dated October 22, 1990, in a colloquial sense, "fine-tuned" the asset purchase agreement with up-dated information and details. Additionally, both A & P and Steinberg signed reciprocal non-competition agreements dated October 22, 1990. Follow up items subsequent to closing included settlement date adjustments reflecting finalized figures on matters such as vacation pay, cola and xmas bonus for some employees, department head premiums, etc.

70. A supply agreement was entered into on October 22, 1990 between A & P and Trillium Meats, a division of Steinberg, for the supply of meat for a defined period until June 30, 1991, subject to renewal. The transaction was described as an "arm's length" agreement; no employees of A & P were involved in the operation or management of Trillium Meats. The document itself states that Trillium shall process, pack and sell the products to A & P as an independent contractor with no authority or power to bind A & P, to assume or create any obligation or responsibility, express or implied, on behalf of A & P or to represent to anyone that Trillium has such power or authority. That arrangement ended in January 1992.

#### Hiring of Warehouse Employees by A & P

71. Pursuant to the asset purchase agreement, the employees in the Teamsters bargaining unit were given notice of termination effective October 20, 1990. The termination date coincided with the closing date of the transaction as Steinberg was responsible for supplying the stores until then. Prior to closing, Steinberg placed advertisements in newspapers indicating to potential employers the availability of its complement of skilled employees (skilled trades, general warehouse and drivers) in its distribution centres. The ads noted that, as the closure of the distribution facilities approached, experienced warehousing personnel would be available for employment. The asset purchase agreement made no provision for the assumption of employment offers to distribution centre bargaining unit personnel nor was that discussed during the final negotiations culminating in the sale. Steinberg did not attempt to place its warehouse employees with A & P.

72. Following the asset purchase, A & P temporarily used some outside storage facilities pending the installation of additional racking at the existing A & P warehouses. Additional equipment (several forklift and pallet trucks) was purchased but, essentially, from the regular budget line. Burden and Byars testified that the transaction did not significantly affect prior supply arrangements except with respect to volume. The relationship between the A & P distribution centre and the buying department and data processing function was not changed. The new product items were added to the existing computerized system and handled as was other product with respect to orders, selection and distribution.

73. The distribution function at A & P need only be briefly described. Product is received at the warehouse, unloaded and the billing information entered into the computerized system. Pallet labels, describing the product, commodity number, slot number, date received and quantity, are generated. The count is verified, the pallet tagged and the product is transported to the appropriate location by the forklift operator. Stores order product through the data centre at head office. That office produces invoices and labels for the order which are printed there or directly at the distribution centre. The invoice is sent to the store; the label is used by the order selector. A co-ordi-



nator at the distribution centre determines the loading schedule and attempts to maximize the loads delivered by the trucks to various stores (regardless of the store's banner as A & P, Miracle Food Mart or Dominion) in a geographic area. The orders are divided into selection packages and the labels given to selectors by shipping. The selectors fill the pallets with the requisite product, labelling the items as selected. A shipping pallet tag, identifying the store number and selector, is attached to the skid. The selector completes the paperwork involved and identifies to the co-ordinator any problems in filling the order. The product is loaded on the trailer and, once all loads are completed, the trailer is billed out and the product transported.

74. A & P did expect to hire additional warehouse personnel to handle the increased volume expected as a consequence of the purchase of the stores. Initially, the projections were for 140 full-time and 70 part-time employees; about 195 were to be hired with the objective of retaining 140. The eventual figures were closer to 90 and 75 respectively. Additional personnel were needed in the classifications of receiver, shipper, forklift operator, general warehousemen, checkers and selectors. In anticipation of the acquisition, a study was prepared regarding the feasibility of integrating the servicing of the stores through the existing distribution facilities.

75. A detailed plan, dated August 21, 1990, was produced showing critical paths for handling the increased volume. Ads were to be placed indicating interviews would be scheduled in late August and early September. Initial screening was to be followed by interviews and an ergonomic medical evaluation. Successful applicants were to be offered part-time employment with the understanding that, if their performance was acceptable, full-time employment would be offered in October. Training was to include: orientation (expectations regarding absenteeism, productivity, attitude; plant tour; review of rules and regulations, selecting procedures and principles, manual, health and safety video); four day intensive on the floor training with experienced trainers; review with trainers at end to evaluate new employees' performance and attitude. A probationary period follow up was outlined. It was anticipated that other training needs had to be satisfied during this period as well, given that existing employees would bid into new positions. With respect to clerical and supervisory hiring, interviews and hiring would commence after August 20 but some positions would remain vacant until closing date; experienced Steinberg employees would be considered for those positions. The document addressed the several distribution facilities in terms of current complement, expected increase, shifts, racking, layout, supervision, equipment, procedures, renumbering and re-labelling, etc.

76. Both Byars and Burden testified that A & P had to commence the hiring process in September 1990 in order to have a trained workforce in place to service the new stores as of the closing date of the transaction. The new employees had to be familiar with A & P's specific order selection process, including the paperwork. Burden testified with respect to the training of employees in the warehouse. There was one day of orientation and four days on the floor training. A & P has a productivity program which specifies the time expected to carry out various duties. The company expects that an employee's productivity reaches 80% after 120 hours and 100% after 200 hours. In addition to the training of the new selectors, those persons who transferred into other vacancies from the full-time and part-time units required training with respect to their new duties.

77. It is appropriate at this point to comment on the collective agreements between A & P and the RWDSU covering the distribution operation. There are separate full-time and part-time bargaining units. The collective agreements require that new full-time positions be first posted in the full-time bargaining unit to provide the opportunity for existing full-time employees to apply for and, if successful, transfer to the new positions. After that process, if the original positions remain vacant and/or if other positions have opened up because of transfers by full-time employees, the positions are filled from the part-time bargaining unit. Thus, persons are hired into the



full-time unit through the part-time unit; all new employees at the A & P warehouses are first hired as part-time employees. The wages for new hires into the part-time unit are below those for the full-time employees. There is a thirty day probationary period for new full-time employees.

78. As noted, the original projections were for approximately 140 full-time and 80 part-time employees. Additional positions were first posted in the full-time unit. The full time positions were anticipated as: 87 at West Mall, 13 at frozen food and 40 at Vickers Road. An internally posted memo indicated, as well, that at least six separate sets of postings might be required to determine the location, classification and shift that the new hires would eventually be filtered into. To quote an excerpt from the memo:

"It is in the best interests of all employees that this placement procedure be done as quickly and fairly as possible.

The shifts and number of employees as well as the classifications have been closely scrutinized by management and discussed with the [union management] committee, and it is management's view that these will be effective to cover our requirements for the foreseeable future.

We would ask for your cooperation during a trying and busy period over the next few months.

Note: It is very important and in your best interest to follow the instructions outlined in the form letter when availing yourselves for all positions. It has also been set up that the union will be monitoring the process as it evolves."

79. As a result of the internal posting procedure, the only vacancies which remained were in the classification of "order selector". The other (and preferable) positions (such as, shipper, receiver, checker, forklift operator) were filled internally. Postings in the part-time unit for selectors commenced in September 1990 and ended prior to October 9, 1990.

80. In anticipation of the hiring a number of new employees, ads were placed, in August, in newspapers for order selectors and several "open houses" were held to receive applications. All applicants were given the standard A & P application form. That form requests the date on which an individual is available to start work. Hiring for part-time employees commenced in September with a break in mid-October to reassess the number of additional persons who would be needed. Hiring commenced again in the first week in November and continued until mid-February 1991.

81. Applicants were interviewed by various management personnel. If applicants were not immediately available, they were informed that their applications would be held and not considered further until the applicant contacted the company to indicate such availability. Burden testified that part-time employees hired between August and October were advised that there was a strong possibility that they would be offered full-time employment in October 1990. From November onwards, however, additional full-time employees were not needed; new hires were not given an expectation of full-time work.

82. A few Steinberg warehouse employees applied for positions at A & P. John Ricchio testified that he applied in September 1990 and was interviewed. He stated he was told that all Miracle Food Mart applications were being put to one side and they would be in touch later. On his return to the company in early October, Ricchio testified he was informed by a security guard that the company was not taking applications. There was no record of Ricchio's application. Brian Payne testified that he went to the A & P distribution centre but decided not to apply for a position. Michael Ursini testified that he was informed by a security guard at A & P that the company was not accepting applications in November 1990. Thomas Michailidis applied for and was hired in February 1991 as a part-time employee at the A & P distribution centre. He was terminated in April 1991 during his probationary period for not meeting the productivity standards. Michael

Lemarsh testified that he approached Wilson Transport for a position as a driver but received a "cold shoulder".

83. In October, A & P met with Investment Canada; in a subsequent letter from Dunne, A & P confirmed their intention to operate the Steinberg Ontario business as a separate organization, that the existing supply arrangements would not be significantly affected and that the employees in the stores and the head office management and clerical staff would be offered employment. As well, Dunne indicated, in a letter dated October 12, 1990, to Investment Canada the following, in part:

"... While A & P is very sympathetic with the position in which terminated warehouse employees find themselves, A & P has made its requirements for additional warehouse employees for its warehouse facility, who must be available immediately, well known. Up until yesterday, only twenty-four individuals who identified themselves as Steinberg warehouse employees (who had been notified by Steinberg of termination and severance arrangements) had made applications for employment to A & P, and none of them were prepared to accept immediate employment with A & P and prejudice their Steinberg severance arrangements. In the past 7 weeks, we have received 959 applications for these positions from others who are available to work now."

84. The data regarding the applications and their disposition indicated that, of the 275 applicants as of September 4, 1990, 254 received interviews and 56 were hired. By the end of September, another 90 of 450 applicants were hired (the figures are approximate). Open houses were scheduled for October 5 and 9 and another 105 interviews were scheduled for that week. Hiring dropped off dramatically during October and November 1990 and continued at a low level in December and the new year as well. By February 28, 1991, the totals were 1598 applicants and 422 hires (some hires were to replace attrition and dismissals during the probationary period).

85. The documentation also indicates that, of approximately fifty applicants from persons at the Steinberg distribution facilities, some thirteen were employed by A & P as of January 1, 1991; two of those quit by January 17, 1991. Of those thirteen, two were full-time probationary and nine were part-time probationary at that point. Of those applying, eleven indicated that they were only interested in full-time work and seventeen were not followed through on for a variety of reasons (including the wrong phone number or no phone number on the application, not available for medical reasons, failed to show up for an interview, worked as a driver or in accounting, were to contact A & P in January, etc.).

86. Following the announcement of the acquisition, there was a meeting with A & P management and representatives of the RWDSU, Local 414 in August 1990. The agenda included a review of the take-over, proposed shifts for all distribution facilities, proposed posting procedures, implementation of re-studied measured work day program data. Some union members expressed a concern with respect to the hiring of employees from Steinberg's distribution centres. The concern arose from difficulties in integrating the former Dominion warehouse employees with the existing A & P employees as a result of the sale of Dominion to A & P. The RWDSU represented both the Dominion and A & P warehouse employees at the time of that sale, albeit in different locals. The resulting integration of the employees resulted in litigation before the Ontario Labour Relations Board (see: *Great Atlantic & Pacific*, *infra*). Burden testified that A & P's response to the question was that everyone would be treated the same and that the expression of concern did not affect the company's hiring policy. Further, Burden testified that the union representatives did not suggest that the Steinberg's warehouse employees not be hired.

## SUBMISSIONS

87. The representations of counsel are next set out in highly abbreviated form. Given the



length of the proceedings, counsel submitted factual distillations, summarizing their respective positions on the evidence, as a factual matter, in advance of their oral arguments. This process facilitated and expedited the submissions process. The Board thanks counsel for their able and thorough submissions in this complex matter.

88. Counsel for A & P dealt with what he characterized as the three issues from A & P's perspective, namely, was there a sale, was there an unfair labour practice in the structure of the transaction and was there an unfair labour practice in the hiring by A & P. The negotiations over the years culminating in the transaction were reviewed; counsel submitted that clearly established that A & P did not wish to purchase and did not need the Steinberg distribution centres. It was argued that the distribution centres were a severable part of the business, operationally and functionally. A & P purchased only that "part" of the Steinberg business consisting of some of the stores. Counsel argued that was consistent with the sale of a business jurisprudence. As to the structure of the transactions, counsel submitted that there was no anti-union animus present as employees in A & P's distribution centre were represented by the RWDSU and, further, A & P accepted its position as successor employer with respect to the stores' bargaining unit employees. It was argued there was no evidence of a specific anti-Teamster animus. The retention by Steinberg of the warehouse employees until closing was a legitimate business interest given Steinberg's obligation to A & P to continue normal operations until that date and to preserve customer goodwill. Counsel argued, with respect to the hiring of new employees by A & P, that the company followed its usual hiring processes, in accordance with its collective agreement obligations. It was a legitimate business concern for A & P to schedule the hiring process so as to ensure the availability of a trained work force as of the closing date. Counsel also noted that some Steinberg warehouse employees did apply and were hired and, further, those who did not so apply for positions could not assert an unfair labour practice. In summary, counsel requested that the Board dismiss the unfair labour practice allegations and the sale application.

89. Counsel for Steinberg dealt with the issues of whether there was a sale of a business and the bad faith bargaining allegation. With respect to the first issue, counsel adopted the submissions of counsel for A & P and asserted the jurisprudence, including *Great Atlantic and Pacific*, *infra*, was dispositive. That is, Steinberg sold a part of its business (the stores) and not the distribution centres. It was argued that the stores, even individual stores, have been regarded as "parts" of a business within the meaning of the Act. Steinberg retained the distribution centre part of the business but chose not to continue that operation. With regard to the duty to bargain in good faith, counsel asserted that the onus of proof did not lie with Steinberg and, further, that the individual complainants lacked status to bring that complaint. As well, counsel contended that the duty comprised two separate disclosure obligations with respect to a company's future intentions. A decision already made which could impact on the bargaining unit must be disclosed during bargaining and a company must respond honestly when asked in bargaining if an employer was contemplating initiatives which were likely to impact on the bargaining unit. In any event, no jurisprudence imposed a duty on the shareholders directly or to deal with unpredicted future events which might impact on the bargaining unit. In that context, counsel reviewed the facts in support of his assertions that there was no firm decision during negotiations to sell Steinberg; indeed, the company had been taken "out of play". Further, Steinberg was not asked in bargaining if there were any plans to sell at some point in the future. It was argued that the Steinberg negotiators responded in good faith and their belief with respect to the future was based on reasonable grounds. Counsel reviewed the time period prior to the commencement of negotiations, at the negotiating table and Steinberg's actions following bargaining with regard to pressing ahead with wholesaling as consistent, in each period, with the duty to bargain in good faith. Counsel also contended that the evidence demonstrated that the union sought but did not obtain increased job security and that the company did



not provide job security guarantees in conjunction with FOS and labour peace. Counsel submitted the sale application should be dismissed, together with the unfair labour practice allegations.

90. Counsel for the RWDSU solely dealt with the sale of business issue. It was argued that the jurisprudence did not establish a bright line test and one important consideration was the mischief against which the statute was directed. On an instrumental basis, the Board has determined whether the transfer was a coherent and severable part of the business. Counsel adopted the submissions of counsel for A & P and for Steinberg that, in this industry, distribution may be regarded as a coherent and severable part of the business. On an instrumental view, there was no transfer of the distribution business to A & P. Finally, there must be regard to the jurisprudence distinguishing a "sale" from a transaction carried out in connection with a parallel business operation. Counsel argued the instant facts with respect to the existing distribution operation of A & P was consistent with that approach. In summary, counsel submitted there was no sale of the Steinberg distribution business to A & P.

91. Counsel for the individual complainants did not dispute the applicable legal principles but submitted that the application of those principles in the instant context sustained the allegations. Counsel extensively reviewed the evidence in support of his position that the economic substance and reality of the transaction was that the distribution business was continued by A & P, notwithstanding that the "bricks and mortar" were not purchased, and that one of the factors underpinning the structure of the transaction was the desire to be rid of the Teamsters collective agreement. While the distribution operation could be a "stand alone" segment, that was not the instant case given the description by Steinberg of its retail food business as an integrated operation. Counsel argued the purpose of the statute was to preserve bargaining rights. It was conceded that A & P had legitimate business reasons for not acquiring the distribution centres but counsel contended that one of the factors was an anti-Teamster animus and that was sufficient, given the taint theory of the jurisprudence, to ground a finding of unfair labour practices in the structure of the deal and the hiring of additional warehouse employees by A & P. Counsel stressed that Gaucher and Wood were not called to testify with respect to their private conversation. With respect to the bad faith bargaining allegation, counsel submitted that Steinberg had induced the employees to believe their future was secure and that specific job security clauses were not needed in the collective agreement. Given the duration of FOS and labour peace, it was submitted that the duty to bargain in good faith transcended the specific collective agreement negotiated in the Fall of 1988. What contravened the duty to bargain was the sale of Steinberg to Gaucher as that exposed Steinberg and its employees to all the risks and uncertainties that the employees were told they were putting behind them in agreeing to FOS and labour peace. While the Teamsters unit constituted a small part of the Steinberg operation, counsel contended that the distribution centres were of vital importance and the Teamsters could have negotiated more forcefully for iron-clad job guarantees. With respect to remedy, counsel sought a declaration that A & P was bound to the Teamsters collective agreement as a successor employer or, in the alternative, a representation vote. If the structure of the transaction were found to constitute an unfair labour practice, the Board should find a sale on that basis, even if, otherwise, the transaction would not fall within the statutory provision. If only the hiring was found contrary to the Act, counsel sought a declaration and monies payable to the Teamsters employed at the distribution warehouses for their "loss of opportunity". With respect to the duty to bargain in good faith allegation, counsel also sought a declaration and monies for "loss of opportunity" to negotiate different and improved provisions in the collective agreement.

92. Counsel for the Teamsters concurred with the submissions of counsel for the individual complainants. With respect to the sale issue, counsel argued that the jurisprudence must be read in the factual context of each case and, here, the distribution centres operated as an integral part of

the entire business. That is, there was a disposition of the warehouse business through the sale of the stores. With respect to remedy, counsel sought a declaration that the Teamsters collective agreement was binding on A & P in the "like" bargaining unit. Further, it was asserted that the Teamsters collective agreement obligated A & P to utilize its own drivers to distribute product to the transferred stores. Counsel sought a representation vote of the employees in the distribution centres, even if the drivers were not included in that vote. With regard to the structure of the transaction, it was argued that there was evidence that one of the factors analyzed by A & P in its determination was the existence of the Teamsters as bargaining agent for the employees in the distribution centres. The fact that A & P agreed to take the office employees (who were not unionized) was stressed. That is, A & P discriminated on the basis of union representation, contrary to the statute. Given that Steinberg would be liable for the termination costs of shutting down the warehouse operation, it made no business sense for Steinberg not to make enquiries of A & P to accept some of those employees. The only reasonable inference, it was asserted, was that Gaucher and Wood had agreed not to involve the Teamsters bargaining unit members to avoid a "third culture" in the A & P distribution centres. If the Board concluded that the deal was structured so as to avoid the Teamsters, counsel argued that the relief ordered should mirror that which would flow if a sale was found. If the Board found the deal was not so structured, counsel contended that the conduct of A & P in hiring the additional employees was designed to frustrate the hiring of Teamsters. The fact that only a few Teamsters actually applied was characterized as an issue of mitigation. Counsel did not make submissions regarding the duty to bargain in good faith allegations.

93. In reply, counsel for the individual complainants indicated his agreement with the submissions of Teamsters' counsel. Counsel for the RWDSU, while not agreeing that there was a sale, commented on the remedy. That is, a sale finding was not dispositive; the Board would have to consider the issues of intermingling, which collective agreement should apply and who was the bargaining agent. In the circumstances and in view of Board practice, there was a presumption in favour of the existing A & P bargaining unit and a declaration should issue declaring that A & P was not bound by the Steinberg collective agreement. Given the numbers of new employees hired (even assuming all should have been Teamsters) in the context of the existing size of the bargaining units, no representation vote should be ordered. Counsel for Steinberg acknowledged that stores need to acquire product to sell but asserted that A & P chose to use an existing part of its business to satisfy that need. Counsel also noted that, with respect to the warehouse part of the business, all those employees, whether in management, the Teamsters bargaining unit or the UFCW bargaining unit (for maintenance employees) were affected by the transaction and the fact that the warehouse was not acquired by A & P. Counsel for A & P, because of time constraints submitted his reply, on agreement, in writing. Counsel argued that there must be some manner of disposition to ground a finding of a sale and there was none in the instant circumstances. Nor, even in an integrated operation, need there be a sale of the entire operation provided the parts of the business are severable. Counsel also opposed the submissions of the applicants/complainants regarding remedy and, further, argued that no remedy would be appropriate with respect to the allegations regarding hiring given that only a few Teamsters applied and, with respect to those, there was no evidence of discrimination.

94. The cases cited by counsel in respect of their several positions, listed together, included: *Great Atlantic and Pacific Tea Company Limited*, [1986] OLRB Rep. Apr. 485; *Metropolitan Parking Inc.*, [1979] OLRB Rep. Dec. 1193; *Beef Terminal (1979) Limited*, [1980] OLRB Rep. Aug. 1167; *Grand Valley Ready Mixed Concrete Supply Limited*, [1981] OLRB Rep. June 663; *Vaunclair Meats Limited*, [1981] OLRB Rep. May 581; *Brant Erecting and Hoisting*, [1980] OLRB Rep. July 945; *Corporation of the City of Stratford*, [1985] OLRB Rep. June 923; *Gilham Foods*, [1984] OLRB Rep. Oct. 1423; *Kitchener-Waterloo Hospital*, [1991] OLRB Rep. Oct. 1130; *Kitchener-Waterloo Hospital*, [1993] OLRB Rep. Mar. 187; *New Holiday Tavern*, [1987] OLRB



Rep. May 753; *The Globe and Mail*, [1988] OLRB Rep. Apr. 384; *Emrick Plastics Inc.*, [1982] OLRB Rep. June 861; *Sunnylea Foods Limited*, [1981] OLRB Rep. Nov. 1640; *Daynes Health Care Limited*, [1984] OLRB Rep. Aug. 1091; *Penny Lane Food Markets Ltd.*, [1993] OLRB Rep. March 230; *Paperboard Industries Corporation*, [1992] OLRB Rep. Aug. 946; *Union Carbide Canada Limited*, [1992] OLRB Rep. May 645; *Metropolitan Life Insurance Company*, [1989] OLRB Rep. Feb. 175; *BCL Canada Inc.*, [1984] OLRB Rep. June 791; *Amoco Fabrics Ltd.*, [1982] OLRB Rep. Mar. 314; *Consolidated Bathurst Packaging Ltd.*, [1983] OLRB Rep. Sept. 1411; *Zehrs Markets Limited*, [1974] OLRB Rep. May 331; *Culverhouse Foods Limited*, [1976] OLRB Rep. Nov. 691; *More Groceteria*, [1980] OLRB Rep. Apr. 486; *Valencia Foods*, [1984] OLRB Rep. May 773; *New Dominion Stores Inc.*, [1986] OLRB Rep. Apr. 519; *New Dominion Stores Inc.*, [1986] OLRB Rep. Oct. 1378; *Canada Safeway Limited*, [1986] OLRB Rep. Nov. 1498; *Krush*, [1987] OLRB Rep. June 859; *Miracle Food Mart, Steinberg Inc.*, [1988] OLRB Rep. July 679; *Briston Fashions Inc.*, [1990] OLRB Rep. Mar. 223; *Steinberg Inc.*, [1990] OLRB Rep. July 794; *Canadian Pacific Forest Products Limited*, [1990] OLRB Rep. May 492; *Accomodex Franchise Management Inc.*, [1993] OLRB Rep. Apr. 281; *Caressant Care Nursing Home of Canada Limited*, [1984] OLRB Rep. Aug. 1060.

## DECISION

95. The Board has carefully considered the submissions of counsel and the jurisprudence cited. The allegations are addressed in sequence, although it is not possible to entirely compartmentalize the analysis. There was no dispute that the relevant statutory language is that prior to the amendments to the Act which came into force in 1993. Some of the jurisprudence cited followed the coming into force of the amendments but is referred to where the reasoning is apposite and is not predicated on the changes to the Act. Nothing in the instant analysis is to be read as indicative of the rights and obligations under the current form of the Act and/or the jurisprudence developed thereunder where the amendments would have impacted on those rights and obligations and that jurisprudence.

### The Duty to Bargain in Good Faith

96. Counsel for the individual complainants asserted that Steinberg contravened the duty to bargain in good faith in negotiating FOS and labour peace but in subsequently selling the company to Gaucher. That sale, it was argued, exposed the employees to those risks and uncertainties which they thought were being put behind them in settling the collective agreement; had the employees realized the risk of sale continued, they would have negotiated ironclad job guarantees. While counsel has focused on the sale to Socanav, the Board considers it appropriate to measure the statutory duty against the conduct of Steinberg throughout, in part, because it is necessary to examine the collective bargaining negotiations between the Teamsters and Steinberg to understand the context of the subsequent Socanav take-over.

97. The statutory duty to bargain in good faith has been fleshed out by the Board over the years. The aspect of that duty which is of particular concern here is the obligation on the employer to disclose plans or intentions to the union which are reasonably likely to impact on the bargaining unit. The union's opportunity to negotiate with respect to the impact on the bargaining unit of future management decisions is confined to the open period of a collective agreement when the parties bargain over the terms and conditions which are to govern their relationship for the duration of that collective agreement: *Union Carbide*, supra, and the cases cited therein. Because the union's right to bargain about such matters is so restricted, the Board articulated a duty to disclose consistent with the fundamental notion that rational and informed discussion during bargaining was essential to the well-being of the collective bargaining relationship.



98. The first element of the duty to disclose deals with decisions already made which may have a major impact on the bargaining unit: *Westinghouse Canada*, [1980] OLRB Rep. Apr. 577:

“39. ... can there be any doubt that an employer is under a section [then] 14 obligation to reveal to the union on his own initiative those decisions already made which may have a major impact on the bargaining unit. Without this information a trade union is effectively put in the dark. The union cannot realistically assess its priorities or formulate a meaningful bargaining response to matters of fundamental importance to the employees it represents. Failure to inform in these circumstances may properly be characterized as an attempt to secure the agreement of the trade union for a fixed term on the basis of a misrepresentation in respect of matters which could fundamentally alter the content of the bargain.”

99. The concept of “decision” was regarded as elastic so as to include “de facto” decisions. Nor was the Board insensitive to the possibility of manipulation by an employer seeking to delay decisions which would attract the duty to disclose until the collective bargaining window had closed. In addition to the obligation of unsolicited disclosure with respect to de facto decisions, the Board articulated a duty to respond honestly when asked in bargaining regarding company plans. Finally, the Board recognized that the representatives of the employer at the bargaining table must be informed so as to respond meaningfully to questions asked by the union. These aspects to the duty to disclose, and their rationale, are usefully summarized in the following passage from *Union Carbide*, supra,:

“23. ... In using the term ‘decisions’, however, the Board at the same time was mindful of the obvious extent to which such a ‘bright-line’ test could invite manipulation by the employer. The timing of such decisions, therefore, or the employer’s announcement of same, continue to be a matter of concern to the Board when following in close proximity to the consummation of what the employer professes to be a good-faith collective bargaining agreement with the Union. And that is why the Board in *Westinghouse* made it clear that in appearing to adopt actual ‘decisions’ made by the corporation as the test for unsolicited disclosure, it had in mind when saying that what it described as ‘de facto’ decisions as well (see paragraph 41). As the Board put it in *Consolidated Bathurst Packaging Limited*, [1983] OLRB Rep. Sept. 1411, at paragraph 50:

...plans and decisions to close a plant can effectively extinguish a bargaining unit and the relevance of the usual terms of a collective agreement. In this context, where a decision to close is announced ‘on the heels’ of the signing of a collective agreement, the timing of such a significant event may raise a rebuttable presumption that the decision-making was sufficiently ripe during bargaining to have required disclosure or that it was intentionally delayed until the completion of bargaining. It can be persuasively argued that the more fundamental the decision on the workplace, the less likely this Board should be willing to accept fine distinctions in timing between ‘proposals’ and ‘decisions’ at face value and particularly when strong confirmatory evidence that the decision-making was not manipulated is lacking. This approach is sensitive to the positive incentive not to disclose now built into our system, and the potential for manipulation.

24. All of the Board’s comments cited above deal with the issue of ‘voluntary’ or unsolicited disclosure. The Board has been quite deliberate, however, in distinguishing the situation where the company has to decide whether it is appropriate to raise something on its own, from that where the Union has shown sufficient interest in the topic to specifically *make* the inquiry at the bargaining table. In the latter case the Board in *Westinghouse*, also at page 39, wrote:

“Having regard to the importance of the exercise, the requirement for full and open discussion, the scope of matters open to bargaining and the statutory framework which binds the parties to the terms of their agreement for its full term, can there be any doubt that the section [then] 14 duty requires an employer to respond honestly when asked in bargaining if he is contemplating initiatives of the type which have a real likelihood of significantly impacting on the bargaining unit.”

Indeed, in the very course of concluding that the line should be drawn at ‘decisions’ (however

loosely defined) in the situation where there has been no inquiry put forward on the part of the Union, the Board went on as follows to comment upon the kind of 'balancing' that it found necessary in arriving at that conclusion:

40. The more difficult question is whether there is an obligation on an employer to reveal on his own initiative plans which are not finalized at the time of bargaining but which, if implemented during the term of the collective agreement, would have a significant impact on the economic lives of bargaining unit employees. On one side the Board must be concerned with potential distortion of the bargaining process by the imposition of an obligation which requires the employer to advise the union on his own initiative of plans which may never become decisions. On the other side, however, the Board must be sensitive to the purpose of the collective bargaining process and to the role of the trade union as exclusive bargaining representative of the employees who might be affected if these plans resulted in decisions being made by the company.

41. The competitive nature of our economy and the ongoing requirement of competent management to be responsive to the forces at play in the marketplace result in ongoing management consideration of a spectrum of initiatives which may impact on the bargaining unit. More often than not, however, these considerations do not manifest themselves in hard decisions. For one reason or another, plans are often discarded in the conceptual stage or are later abandoned because of changing environmental factors. The company's initiation of an open-ended discussion of such imprecise matters at the bargaining table could have serious industrial relations consequences. The employer would be required to decide in every bargaining situation at what point in his planning process he must make an announcement to the trade union in order to comply with section [then] 14. Because the announcement would be employer initiated and because plans are often not transformed into decisions, the possibility of the union viewing the employer's announcement as a threat (with attendant litigation) would be created. If not seen as a threat the possibility of employee overreaction to a company initiated announcement would exist. A company initiated announcement, as distinct from a company response to a union inquiry, may carry with it an unjustified perception of certainty. The collective bargaining process thrusts the parties into a delicate and often difficult interface. Given the requirement upon the company to respond honestly at the bargaining table to union inquiries with respect to company plans which may have a significant impact on the bargaining unit, the effect of requiring the employer to initiate discussion on matters which are not yet decided within his organization would be of marginal benefit to the trade union and could serve to distort the bargaining process and create the potential for additional litigation between the parties. The section 15 duty, therefore, does not require an employer to reveal on his own initiative plans which have not become at least de facto decisions.

It has always been the view of the Board, as Mr. Ublanksy put it in other words, that the specific asking of the question by the Union 'sharpens' the obligation to disclose (see, once again, *Consolidated Bathurst*, supra at paragraph 43). And as a necessary addendum to that, the Board has also noted that it is part and parcel of the duty to bargain in good faith for the employer to ensure that it is sending 'informed' representatives to the table as its negotiators. As the *Consolidated Bathurst* case itself stated, at paragraph 53:

"...Further, it is no answer that the company's negotiators knew nothing about the impending closing. The company has a statutory responsibility to send informed representatives to the bargaining table."

More recently, see for example *Plaza Fiberglas Manufacturing Limited*, [1990] OLRB Rep. Feb. 192 at paragraphs 27 and 28.

100. One other comment from the jurisprudence is noteworthy at this juncture. In *Amoco Fabrics*, supra, the Board adopted the reasoning expressed in the cases regarding the obligation to

disclose. The Board went on to note the vagaries and uncertainties inherent in any enterprise in the following excerpt:

“43. The general principle also applies to a decision that is finalized to the extent that there is no foreseeable impact on the employees or their union. Most private enterprise is a risk taking venture. There is always some element of uncertainty in a business decision. Where a corporate planning decision is made and the employer believes that its decision will not affect its employees there is inevitably some possibility of an error in the employer’s prediction. Events beyond the employer’s control, such as changes in the economy or the introduction into the market of competitors or competing products may affect production and sales and, ultimately, the welfare of the company and its employees. Should it follow that any time during bargaining a company makes a decision that risks its capital and know-how, and by extension its production, sales and employment levels, it is required to disclose and discuss its business strategy and predictions with the trade union that represents its employees?

44. An affirmative answer to that question would be tantamount to moving the union into the corporate boardroom. While some might see that as a positive step, it is not one which in our view can be conjured out of the statutory duty to bargain in good faith and make every reasonable effort to conclude a collective agreement mandated by section 15 of the *Labour Relations Act*. Collective bargaining under the Act is premised on the exercise of traditional management rights by employers to the extent that those rights are not abrogated by statute or by the terms of a collective agreement. Absent some contractual restriction, it is generally the prerogative of the employer to finance, organize, plan and direct its enterprise in the way that it sees fit. As some recent plant closures have demonstrated, errors of judgment in these areas can be fatal to an enterprise. As part of the scheme of collective bargaining employees and the trade unions that represent them understand and accept that they are generally vulnerable to the success or failure of decisions taken by management, just as they are to market forces beyond their employer’s control.

45. In some instances a more enlightened attitude of disclosure and discussion with the union might profit the employer in the long run. Secrecy and mistrust can undermine good labour relations. Communications with the union may produce some positive suggestions to improve the employer’s strategy and enhance its chances of success. It may be wise to insure that a union is aware and onside when a major initiative is undertaken. The advisability of communication must, however, depend on the sophistication of the parties and the overall quality of their bargaining relationship. There is a difference between what is advisable or desirable from a labour relations standpoint, and what is the minimum required by the Act. In our view, it would be unrealistic and unresponsive to the sensitive nature of collective bargaining relationships to require employers to bargain with their unions about corporate decisions made in the belief, held in good faith and on reasonable grounds by the employer, that employees will not be adversely affected. In those circumstances the degree of disclosure remains in the discretion of the employer.”

101. In the above jurisprudential context, the Board turns to the instant facts. In the Board’s view, the conduct of Steinberg throughout the negotiations from 1988 up to and including the takeover by Gaucher in 1989 does not contravene the statutory duty to bargain in good faith.

102. Ludmer and Bilodeau, in initiating the FOS and labour peace concept, were entirely open with the various trade unions representing the employees in the Steinberg retail supermarket operation. All parties were aware that that company was “in play” as a result of feuding amongst the Steinberg family members. Ludmer was candid in his expressed hope that, if FOS and labour peace were accepted by the unions, he could convince the Steinberg board to continue the company as a “going concern”. All parties were aware, from express statements by Ludmer and Bilodeau and newspaper coverage, that the alternative was the likely sale of the company “piecemeal”. This approach by Steinberg management could only be described as full disclosure of the options facing the company and the context in which the unions had to make their collective bargaining decisions.



103. It is important to note that the Teamsters were minor players in the overall picture. If the UFCW locals in Ontario and Quebec did not accept the FOS and labour peace concept, the position of the Teamsters was largely irrelevant. It is also important to note that the Teamsters did not enter formal negotiations until after the conclusion of collective bargaining with the UFCW locals. The details with respect to their acceptance of the company's proposals are set out above and need not be reiterated here. What does bear reiterating is that the Steinberg board took the company "out of play" prior to the commencement of the Teamsters negotiations.

104. Given the discussions between Grimaldi and Bilodeau in the Spring of 1988 and Grimaldi's assurances that he was amenable to FOS and labour peace, it was reasonable for Steinberg to expect that, at the bargaining table, those company proposals would not prove an impediment. However, in giving his assurances, Grimaldi had not been successful in extracting a promise or representation from Bilodeau that FOS and labour peace would only apply to Steinberg and not to a subsequent buyer or any additional commitment with respect to job security. Grimaldi had attempted to obtain those guarantees but such were not forthcoming. Again, up to the point of the formal negotiations for the renewal of the collective agreement, the conduct of Steinberg did not contravene the duty to bargain in good faith.

105. During the actual negotiations, the company and the union each pursued their respective agendas. The union sought additional severance in their initial proposal at three times the *E.S.A.* rate; the company resisted. That position of the union was not withdrawn until the last day of bargaining. The possibility of a bona shida payment was raised verbally but was dismissed by the company. In the Board's opinion, there was nothing in the collective bargaining discussions which constituted a misrepresentation by Steinberg with respect to its plans for the company. At that point, the company was no longer for sale; indeed, Steinberg anticipated an expansion into the wholesaling business. This direction would increase the number of jobs in the distribution centre, not place them at risk. The Steinberg negotiators responded honestly when asked about job security. It is not reasonable to characterize Peardon's response about "being around another thirty years" as an absolute guarantee or as warranting life-time job security. The Teamsters are a sophisticated trade union organization. It is not plausible that the Teamsters negotiating team would regard Peardon's comment as a binding obligation when the collective agreement was silent on the subject. As noted, there is always an element of risk in private enterprise. The duty to bargain does not impose an obligation of correctness or total accuracy with respect to future events. The duty to disclose does require a company to honestly respond to questions and, in the instant case, the Steinberg negotiators did so.

106. Indeed, the conduct of the company following negotiations is entirely consistent with a finding that its negotiators responded honestly to inquiries. As outlined in paragraph 35 and only highlighted in part herein, the company proceeded with a number of steps intended to facilitate a wholesaling operation, including the completion of an inventory billing system, installation of a vacuum system and refrigeration, and improvements to the produce warehouse facilities. As well, Steinberg purchased several wholesale operations in Quebec.

107. It must also be emphasized that Grimaldi had his own agenda for the negotiations. From the initial conversations with Bilodeau, Grimaldi sought a specific wage package ("a buck and a buck") and the alteration of the duration of the Teamsters collective agreement to schedule its expiry after the Oshawa Group negotiations. Grimaldi was successful in that regard. Bilodeau assured Grimaldi that his (Grimaldi's) agenda could be accommodated in the same conversations which dealt with the FOS and labour peace concept. Grimaldi sought and obtained reassurances from Bilodeau in the period prior to the commencement of formal negotiations just as Bilodeau

sought and obtained reassurances from Grimaldi regarding FOS and labour peace. Thus, each party had assessed its respective priorities and, by and large, achieved their objectives.

108. It is not reasonable to characterize the negotiation process as a matter of Steinberg lulling the Teamsters into a false sense of security over the future. The company responded honestly to queries about Steinberg's future plans for the distribution centres. The Teamsters did not ask whether there were no conceivable conditions under which the company could be sold. However, even in that regard, it is useful to note Ludmer's comment reported in the newspapers to the effect that the Steinberg family decided not to tender the controlling block of shares but that the family would again have to decide whether to accept another offer if such was forthcoming at some point (see par. 28). Whether or not the Teamsters' negotiators were specifically aware of that comment, Ludmer was quoted in the public press prior to the commencement of the Teamsters negotiations to the effect there were no guarantees with respect to the family's decision with regard to selling their controlling interest in the future.

109. There was no dispute that Steinberg continued its retail supermarket operation and rejected unsolicited offers from the Oxdon consortium in March and June 1989. As outlined above, Gaucher was successful in July 1989 in acquiring a lock-up agreement from the Steinberg family to acquire a controlling interest in the company. That lock-up agreement was not dispositive of control; Gaucher tendered a take-over bid for the purchase of more than the controlling interest. Gaucher, through Socanav, was successful in his take-over bid, in the face of a battle for control of Steinberg between Socanav and the Oxdon consortium, supported by Loblaws and the Quebec Federation of Labour.

110. Counsel for the individual complainants contends that it is the sale which contravened the duty to bargain in good faith. The Board reviewed the earlier events up to and including the Teamsters negotiations and concluded that there was no violation of the duty in that period. Those negotiations concluded in October 1988. The Socanav take-over bid was successful in July 1989. The case law notes the suspicion that is raised when the decision to sell falls in close proximity to the negotiations during which the company made no disclosure of its plans nor responded to inquiries to the effect that such matters might be considered. In the instant case, the lack of proximity is not supportive of counsel's argument. That is particularly so given the rejection by the Steinberg board of unsolicited bids between July 1988 and July 1989. The Socanav approach was itself unsolicited. Moreover, the Board's finding that there was no promise by the Steinberg negotiators that the company would never be sold or of life-time job security supports the conclusion that there was no violation of the duty to bargain in good faith.

111. Counsel's argument would also impose directly on the shareholders of the company the statutory obligation. This approach is fraught with difficulty. The Board is not here commenting on circumstances of privately held companies where there is no real distinction between the principals of a company and management. In the instant case, while there is no doubt that the Steinberg family held a controlling interest and had a presence on the Steinberg board, the Socanav take-over bid was predicated upon the tendering of specific levels of shares which were widely held. Had those levels not been reached, the bid would have failed. In such circumstances, it is far more tenuous to impose a duty to bargain in good faith on shareholders who are distinct from management.

112. The Board need not ultimately determine herein whether the scope of the statutory duty extends that far. The Board is satisfied that, even if such an obligation is imposed on the Steinberg family in the instant case, their decision to sell their controlling interest cannot be characterized as a violation of that obligation. As noted, there was no express or implied representation during negotiations that the company would never be sold or of life-time job security. Prior to



the Socanav take-over, Steinberg conducted itself in accordance with its stated intention to branch into the wholesaling business (which would increase the job security of the Teamsters bargaining unit members). At the time of the Socanav take-over, the offering circular indicated that, if successful, a detailed review of the company and its subsidiaries would be undertaken. Subsequent to that review, assets of the company might be disposed of but Socanav's stated intention was to continue, as a going concern, the retail and wholesale food business. There is no reason to doubt the veracity of this statement; it is consistent with the rebuff by Gaucher of an approach by A & P in this period. Further, it is consistent with subsequent events. Gaucher sought, through the disposition of various assets to satisfy those creditors who financed the take-over. As well, Gaucher rejected various offers from A & P which sought the acquisition of the stores but not the distribution centres in the Ontario operation. It was only in July 1990 when the anticipated monies from the disposition of the other assets failed to materialize and the financial institutions were demanding payment, that Gaucher finally had no choice but to accede to the A & P offer.

113. Thus, at the time the Steinberg family made its decision to sell its controlling interest, the circumstances more closely resembled those in *Amoco*, supra, where the decision was made in good faith and on reasonable grounds that the employees would not be adversely affected. Indeed, ultimately, that decision remained sound for the vast majority of the Steinberg employees in Ontario, that is, those in the stores acquired by A & P. There is no doubt that the leveraged buy-out by Socanav eventually resulted in the closure of the distribution centres and the termination of the distribution centre employees. The Board regards that outcome, while truly unfortunate for the individuals affected, as part of the expected vagaries of private enterprise and the inherent uncertainties in business decisions. Had the disposition of the other assets yielded the expected returns, there is no evidence to suggest the retail supermarket operation would have been placed on the block.

114. The Board, in its analysis just given, is responding to the argument of counsel for the individual complainants at its highest and, even in those circumstances, a breach of the duty to bargain in good faith is not sustained. On a more traditional approach, wherein the obligation is imposed on management, there can be no doubt that there is no such contravention.

115. Thus, for the reasons given, the allegations of a failure to bargain in good faith are dismissed. Given the Board's conclusion, the Board need not deal with the argument that a bad faith bargaining complaint may not be brought by individual complainants.

#### Sale of a Business and the 1(4) Allegation

116. The section 1(4) allegation was not pressed in submissions. The Board finds that, in the circumstances, there is no basis for a finding under that section of the Act. Both Steinberg and A & P were in the retail supermarket business but as competitors. As noted in paragraph 13, as between the two companies there was no common ownership, directors, management or financial control. As a result of the sale, while a few management personnel associated with MFM were offered positions with A & P, none were such as to fall within the "key persons" line of cases. Although there was a transition team proximate to the scheduled closing, following the sale, the companies continued their separate ownership, directors, management, financial control and operations. The agreement with Trillium Meats was an arms-length arrangement which was terminated in January 1992; during its term, A & P was not involved in that operation. A & P was never involved in the management or operation of the Steinberg distribution warehouses.

117. With respect to the alleged section 63, it is helpful to begin with a sketch of the jurisprudence. The statute defines "business" only as including "a part or parts thereof". The term "sells" has a more expansive definition as including "leases, transfers and any other manner of disposi-



tion". In that statutory framework, the Board has analyzed a myriad of factual circumstances. In each case, the Board has had to determine whether what was transferred between the purported vendor and purchaser constituted the sale of a "business". The Board has looked to various indicia of a sale, including location, equipment and other assets, goodwill, licenses, customer lists, logo or trademark, inventory, non-competition covenants, etc. in reaching that determination. Where a "key person" has continued in the new operation, that may be sufficient to ground a "sale" finding: *Brant Erecting*, supra. A "business" has been regarded as not necessarily co-extensive with specific "work" nor do employees have proprietary rights to "work" performed by a vendor: see *Metropolitan Parking*, supra, for a detailed exposition of the concept of a "business". The presence of the previous employees in the new operation may well be regarded as sustaining a finding of a "sale"; their absence, however, does not establish the contrary conclusion.

118. The Board has approached its decision on the basis that the statute was intended to provide stability in collective bargaining relationships and the rights of employees under a collective agreement notwithstanding a change in ownership of the business. The Board has recognized that commercial transactions may take many forms but that the form of that transaction should not be permitted to negate collective bargaining rights where the commercial arrangement may properly be characterized as a "sale"; *More Groceteria*, supra, articulated the legislative rationale. Finally, the Board has also distinguished between a "sale" and an "idle collection of assets" and between a "sale" and the "expansion of a pre-existing business": *Grand Valley Ready Mixed*, supra.

119. The Board has, as well, been sensitive to the fact that what is critical to the concept of a "business" may be idiosyncratic to an industry. For example, a licence to operate a nursing home was regarded as a critical indicator of a "sale" in *Caressant Care*, supra. In the retail food industry, location has traditionally been regarded as an important element: *Penny Lane*, supra; *Canada Safeway*, supra. Location has not been considered conclusive of the issue in the face of other factors, such as, a lengthy closing or competition: *Valencia Foods*, supra; *Miracle Food Mart*, supra; *Gilham Foods*, supra. A finding of a sale where a party opened a retail food operation where a similar operation existed previously has not been automatic if the Board determined the new operation was the expansion of a pre-existing business: *Steinberg Inc.*, supra. However, the Board has not readily characterized the nature of the businesses as different in the retail food industry despite a changed emphasis in that new operation: *Culverhouse Foods*, supra.

120. The following passage from *Accomodex*, supra, ably articulates the Board's concerns:

54. A "business" is a commercial vehicle which has been rationally constructed to produce certain goods or services for a defined market; and, over the years, the Board has come to what might be described as an "operational" or "instrumental" interpretation of that term. In *St. Leonard's Society of Metropolitan Toronto*, [1993] OLRB Rep. Jan. 56, the Board put it this way:

The Board's conception of the "business" under the *Labour Relations Act* is an operational or instrumental one. The business is not its legal envelope, nor the employees, nor some incidental or unrelated grouping of assets, nor the body of work in which employees may be engaged from time to time. It is a delivery system, an economic vehicle, an organizational means of getting something done. It is to this vehicle that bargaining rights attach and in which they continue if the undertaking or a coherent part of it is transferred to a new owner.

This also seems to be the approach taken by the Supreme Court of Canada in *Syndicat national des employes de la Commission scolaire regionale de l'outaouais (CSN) v. Union des employes de service local 298 (FTQ)*, *Bibeault et al.* [1988] 2 SCR 1048 - a decision involving the successor rights provisions of the Quebec Labour Code. Beetz J. describes a business undertaking as something that "consists of a series of different components which together constitute an operational entity", and "all the means available to an employer to obtain his objectives".

55. The instrumental approach to successorship suggests that bargaining rights are attached to an economic vehicle - the mechanism, resources or facilities by which the undertaking serves its purpose - rather than the purpose itself, the employees, or their work. Bargaining rights attach to the business undertaking. The Board then tries to determine, from a labour relations perspective, whether the transfer and continuation of some facet or facets of that undertaking, warrants a continuation of bargaining rights - for, of course, when interpreting section [now] 64, the Board has to keep in mind its purpose and effect. The Board tries to reach a result which is fair to both the statute and the context under review - that is, a result that appears to be called for to remedy the mischief for which section [now] 64 was passed. That mischief is not the loss of work or work opportunities, but rather the disruption of bargaining rights which would flow from a change in the ownership but continuation of all or part of the elements that make up the business.

56. As a result of section [now] 64, bargaining rights are not coextensive with commercial ownership or the continuing identity of *the owner*, nor does it matter how the new owner comes to have possession of the instruments necessary to carry on all or part of the functions of the predecessor. Bargaining rights continue with a continuation of the business undertaking or a part of it. The cases explore just what those instruments or elements of the business are, and what can be said to be the essence of the undertaking - land, equipment, location, employee skills, licences, patents, etc. They consider, from a labour relations perspective, whether a sufficiently-coherent grouping of those things has been transferred so as to warrant a continuation of bargaining rights.

57. Accordingly, in deciding whether there has been a sale of the predecessor's "business" for successor rights purposes, the Board has found it useful to consider the extent to which the various elements of the predecessor's business can be traced to the alleged successor - that is, whether there has been an apparent continuation of the predecessor's undertaking or organization, albeit with the change of owner. This "tracing" approach was considered by the Board in *Culverhouse Foods Limited*, [1976] OLRB Rep. Nov. 691 (application for judicial review dismissed January 18, 1979) where the Board listed some of the factors which might be significant in deciding if there had been a transfer of the predecessor's business:

In each case the decisive question is whether or not there is a continuation of the business ... the cases offer a countless variety of factors which might assist the Board in its analysis; among other possibilities the presence or absence of the sale or actual transfer of goodwill, a logo or trademark, customer lists, accounts receivable, existing contracts, inventory, covenants not to compete, covenants to maintain a good name until closing or any other obligations to assist the successor in being able to effectively carry on the business may fruitfully be considered by the Board in deciding whether there is a continuation of the business. Additionally, the Board has found it helpful to look at whether or not a number of the same employees have continued to work for the successor and whether or not they are performing the same skills. The existence or non-existence of a hiatus in production as well as the service or lack of service of the customers of the predecessor have also been given weight. No list of significant considerations, however, could ever be complete; the number of variables with potential relevance is endless. It is of utmost importance to emphasize, however, that none of these possible considerations enjoys an independent life of its own; none will necessarily decide the matter. Each carries significance only to the extent that it aids the Board in deciding whether the nature of the business after the transfer is the same as it was before ...

58. If many of the elements that made up the predecessor's business organization can be found in the hands of the successor, and are used for the same business purposes, there is an inference that there has been a transfer of a business to which section [now] 64 applies. The more the transferee's ability to carry on his business is derived from or dependent upon things acquired from the proprietor of the predecessor business, the stronger the inference will be - particularly if the predecessor has ceased to carry on its business or has withdrawn from the relevant market. Continuity of the economic mechanism or vehicle points towards a "successorship" within the meaning of the Act - which is to say the application of a provision that results in a continuation of the institutionalized collective bargaining relationship. The issue before the Board, of course, remains whether there has been a transfer of a "business" or "part" of a business within the



meaning of section [now] 64; but it is much easier to make that finding, with the result that the collective bargaining relationship will be continued, if there is a substantial continuity of the other elements of the predecessor's business organization.

59. As might be expected in a labour relations statute, the Board pays particular attention to the "character" of the business (a matter referred to in section [now] 64(5)) and the characteristics of the employer/employee relationship, because, from a labour relations point of view, the importance of the business is that it generates work opportunities for employees. The activities of the business require it to enter the labour market as an employer, and this, in turn, can give rise to the employment or collective bargaining relationships with which the Act is concerned, and which section [now] 64 is designed to preserve. Accordingly, in determining whether there has been a "sale" within the meaning of the Act, the Board attaches particular significance to the nature of the work performed in, and by, the business, before and after the alleged transfer. If the nature of the work performed subsequent to the transfer is substantially similar to the work performed prior to that transaction (and if the employees, or types of employees, are the same) this would normally support an inference that there has been a transfer of a business or part of a business within the meaning of section [now] 64. This approach with its focus on jobs is one that seems to have been taken by the B.C. Court in *R v. B.C. Labour Relations Board ex parte Lodum Holdings Ltd.* (1969) 3 D.L.R. (3d) 41. At page 52, Dryer, J. commented:

The importance of the 'business' in its labour relations aspect is the jobs it provides for the employees. One factor to be considered therefore, is whether the same or substantially the same jobs are being performed. That depends on a number of factors, such as whether the jobs are being performed at the same or substantially the same times and places, in respect of the same or substantially the same goods or services, and for the same or substantially the same customers or patrons, etc. These matters are, in my opinion, more important than the form of transfer.

60. Unless there is a continuation of work and jobs, it would make little sense to preserve the collective bargaining relationship or collective agreement. Conversely, if the work, jobs, or employees are the same or substantially similar, it is easier to conclude that the transaction is one to which section [now] 64 was intended to imply - and that is especially so if the work is being performed in the same context, at the same location, with the same equipment, or in respect of the same clientele.

121. The Board has also addressed the reference in the statute to "part" of a business as included within the ambit of a "sale". The Board has determined that a commercial transaction may constitute a "sale" where a coherent and severable "part" of a business has been transferred: *Paperboard Industries*, supra; *Beef Terminal*, supra; *Vaunclair Meats*, supra. In that regard, it is useful to again refer to *Accomodex*, supra, in the following excerpts:

64. Most of the cases under section [now] 64 involve an alleged sale of a business in its totality. Only a few consider the meaning to be ascribed to the words "part of a business". Yet those words pose much more difficulty than the term "business" itself. Almost anything actually traceable to the predecessor could be considered "part" of its business, but it cannot have been intended that every minor disposition of surplus assets should give rise to a successorship. To accept that view, would make section [now] 64 the vehicle for extending rather than preserving bargaining rights. That is why the Board has not accepted a literal or dictionary definition of the words "part of a business" and has been much less inclined to find a successorship where the transferee already has its own existing undertaking or capacity.

65. The content of the term "part" of a "business" must be considered in the particular factual context; however, a few cases may illustrate the way in which the Board has interpreted those terms. The Board has found a transfer of "part of a business" where one of a chain of retail stores has been sold to a competitor (*Loblaws Groceries*, [1973] OLRB Rep. Jan. 72, *More Groceries Limited*, supra); where there was a transfer of certain milk delivery routes in a particular geographic area (*Borden Company Limited*, [1970] OLRB Rep. Jan. 1244); where there was a transfer of the oil burner and installation service of a firm which was primarily engaged in the sale and delivery of fuel oil (*Automatic Fuels Limited*, [1972] OLRB Rep. May 515); where a slaughterhouse which was formerly part of a much larger integrated meat-packing company



was transferred to a new owner (*Beef Terminal*, [1980] OLRB Rep. Aug. 1167); where the shock-absorber portion of a much larger business was transferred to a firm which leased the machinery equipment, tools and a portion of the premises used by the predecessor (*Canack Shock Absorbers*, [1973] OLRB Rep. Oct. 508); where a firm acquired the premises and some of the equipment used by the predecessor to produce two products which had accounted for only a small portion of the predecessor's total production (*Alcan Building Products Limited*, [1968] OLRB Rep. May 213); and where a firm took over some of the functions of a larger enterprise using some of the equipment, employees or a portion of the premises formerly used by the larger business to serve at least some of the same customers (*Vaunclair Meats Limited*, [1981] OLRB Rep. May 581, *Antonacci Clothes Inc.*, [1984] OLRB Rep. July 887, involving respectively a meat purveyor and a clothing manufacturer). (c.f.: *Central Native Fisherman's Co-operative et al*, [1977] 1 Can. LRBR 329, the British Columbia Relations Board found that there had been a transfer of a "part of a business" when a cannery which was formerly part of a much larger business organization was sold to a fisherman's co-operative.)

66. In each of these cases, the Labour Relations Board found that the predecessor had transferred a coherent and severable "part" of its economic organization - managerial, or employee skills, plant, equipment, know-how, or goodwill - thereby allowing the successor to perform a definable part of the economic functions formerly performed by the predecessor. This "new" economic organization undertook activities which gave rise to employment, and the terms and conditions of employment, together with the union's right to bargain about them were preserved. The "part" of the predecessor's business which it no longer wished to continue, provided the business opportunity which the successor was able to pursue to its own advantage.

67. In all of these cases, there was a transfer of a distinct part of the predecessor's configuration of assets or capacity to carry on business, and no material change in the character of the work performed by the employees within that asset framework. There was a continuation of the work performed, the essential attributes of the employment relationship, and the skills of the employees; and, but for section [now] 64, the established bargaining and collective bargaining rights would have been lost. This was the mischief to which section [now] 64 is directed, and the Board was satisfied on the evidence in each of these cases that it should be applied.

122. The instant case raises a rather novel twist on the existing jurisprudence. A & P expressly agreed in the transaction documents that it was a successor employer pursuant to the Act with respect to the stores it acquired as a result of the asset purchase agreement. The stores employees continued in their employment and continued to be represented by their bargaining agent; the terms and conditions of their employment continued pursuant to their collective agreement. There is no doubt that the transaction would be characterized as a "sale" of those retail stores within the meaning of the Act. What is asserted is that A & P also acquired the distribution operation.

123. Counsel for the individual complainants contended that, while the "bricks and mortar" were not purchased and while the distribution operation could be a "stand alone" segment, that was not so in the instant case given Steinberg's description of its retail food business as an integrated operation. Further, counsel pointed to the purpose of the statute of preserving bargaining rights and the fact that A & P supplied the former Steinberg stores through its distribution centres. Counsel for the Teamsters concurred with those submissions and emphasized that, here, the distribution centres operated as an integral part of the entire business.

124. The Board does not agree. The essence of the argument is that the Steinberg retail food operation must be taken as an indivisible whole. That is not consistent with the jurisprudence, sound labour relations or the facts in the instant case. The Board considers each element in turn.

125. The jurisprudence has long recognized in the retail food industry that the concept of successorship under the Act may apply to individual stores. That is, even if part of a retail "chain" operation, a company which divests itself of a single store may well be found to have "sold" a busi-

ness. Indeed, the Board has not regarded such sales as “parts” of a business but as “stand alone” operations: see *More Groceteria*, supra, *Penny Lane*, supra, *Canada Safeway*, supra, *Culverhouse Foods*, supra and the cases cited therein. Where the Board has not characterized the impugned transaction as a “sale”, the rationale has not been grounded on the fact that a store was not an appropriate unit for the application of the statute but on other factors: see *Valencia Foods*, supra, *Miracle Food Mart*, supra, *Gilham Foods*, supra and *Steinberg Inc.*, supra. It is inherent in the concept of a “store” that a store sells items which it acquires from other sources. The fact that the stores in the cases noted must have acquired product from elsewhere was not regarded as a relevant, let alone determinative factor in deciding whether the transaction constituted a “sale”.

126. Counsel’s assertions herein would require a purchaser to acquire the entire operation of a vendor for there to be a “sale” finding. In the Board’s view, the argument of counsel cannot but help call into question the existing jurisprudence which developed to give life to the statutory intention of preserving bargaining rights in the face of various commercial transactions which were tantamount to a “sale” of a business. There is no jurisprudence which would support a principle that, under the Act, a commercial transaction is an “all or nothing” disposition. Further, if counsel is correct, a company selling its operations “piecemeal” would result in a finding that the purchasers of each part were all found to have acquired the original business. That is, there would be multiple and conflicting sale declarations. There is nothing to commend such an approach. Nor is there anything in the instant circumstances which differentiates this case conceptually from the traditional approach in the jurisprudence.

127. Nor is the approach urged upon the Board consistent with sound labour relations. A “macro” approach to the definition of “sale” which would require the acquisition of an entire operation by a single purchaser would not assist in the preservation of bargaining rights and the continuation of employment opportunities. If such a buyer is not found, the entire operation may well close whereas its constituent “pieces” may be assured of a healthy future. It is in the “micro” level, through the recognition that a single store may be the subject of a “sale”, that the intent of the statute is best fulfilled. Further, the inclusion of “part of a business” in the statutory definition suggests to the Board that the “micro” approach is preferable.

128. The instant facts, as well, do not support counsels’ position. It is not sufficient for counsel to assert that Steinberg regarded its operation as “integrated” and that that fact was dispositive. Even if a company operated an integrated business, there is nothing to preclude the company deciding to sell its business, or parts of that business, to one or more purchasers. In the instant case, during negotiations culminating in the inclusion of FOS and labour peace, Ludmer emphasized that he was attempting to persuade the Steinberg board to continue the company as a “going concern” but that, if he failed, it was likely the company would be sold off “piecemeal”. It is accurate to note that Steinberg urged A & P to buy the entire operation including the distribution centres. However, it must be remembered that such a result would have benefited Steinberg financially given the structure of the pricing for the purchase; their position was not altruistic.

129. It is also accurate to note that A & P could have decided to purchase the entire retail supermarket operation, including the distribution centres. The asset purchase agreement makes clear that the distribution centres were not included in the transaction. The Board accepts that it is the substance and not the form of the transaction which is determinative. Parties cannot, merely through language in an agreement which they control, preclude a finding that the transaction constitutes a sale. In the instant case, A & P acquired no assets relating to the distribution centres. This is not merely a question that the “bricks and mortar” (i.e., locations) were not purchased; the equipment, truck or trailer leases, and fixtures were not transferred. A & P did purchase the inventory but this was to ensure the viability of the stores whose inventories would otherwise have



been depleted of high velocity items to the detriment of customer goodwill. The inventory purchase does not point to the acquisition of the distribution centres.

130. A & P certainly would have to supply its newly acquired stores with produce but, in that, there is no meaningful distinction from the existing jurisprudence which, in focusing on the characterization of individual stores as “businesses” within the Act, separated those commercial units from their supply arrangements. A & P carried out that supply function from its existing distribution centres. In that sense, the circumstances bear close resemblance to the jurisprudence recognizing expansions to existing businesses as outside the ambit of the sale language. In that regard, it is important to note that A & P’s distribution operation differed significantly from Steinberg’s both in the organization and procedure in the warehouses and in the fact that A & P did not operate its own distribution fleet.

131. Moreover, it cannot be reasonably argued that the Steinberg distribution centres are not “stand alone” operations. Following the conclusion of collective bargaining negotiations in 1988, Steinberg took steps to expand into the wholesale business. Those have been outlined in paragraph 35 above and need not be repeated here. It is evident, from the entry of Steinberg into wholesaling, that the distribution centres were conceived of as fulfilling a function greater than the supply of existing Steinberg retail supermarkets. The direction in which the company was moving was to act as supplier for retail stores outside the Steinberg chain. Conversely, it is appropriate to note that it is not necessary to operate a distribution centre to supply one’s retail supermarkets. The evidence indicates that stores may be supplied, to a greater or lesser extent, directly from suppliers and/or from wholesalers (as Steinberg itself hoped to become). In this regard, the Board finds further support in its conclusion from the decision in *Great Atlantic and Pacific*, supra, which dealt with the sale by Dominion to A & P of its warehousing operation. In that case, there was no question that the distribution operation constituted a “business” or “part of a business” to which the Act applied and separate from the retail supermarkets, some of which were also acquired by A & P in the same transaction.

132. One final comment is apposite. The jurisprudence has, in each case, evaluated those elements of a business which were transferred in order to determine whether or not a “sale” occurred. In the instant case, no elements of the distribution operation were acquired by A & P. What was acquired were the majority - but not all - of the Steinberg Ontario retail supermarkets. The stores did have to be supplied with product to sell. But that function, of itself, does not constitute the “sale of a business” where A & P chose to fulfil that function through its existing distribution centres. The stores, taken together or singly, constituted the sale of a business or part of a business within the meaning of the Act. The Board is satisfied there was no sale of the distribution centres.

133. In summary, for the foregoing reasons, the Board dismisses the section 63 and 1(4) applications. Given the Board’s conclusion, the Board need not deal with the arguments related to the like bargaining unit, intermingling and the appropriateness of a representation vote or the scope of those entitled to vote.

#### The Structure of the Asset Purchase Agreement

134. The Board next considers the allegation that the transaction was deliberately structured so as to oust the Teamsters bargaining rights. It was asserted that A & P was motivated by an anti-Teamsters animus in refusing to purchase the distribution centres and, in so doing, committed an unfair labour practice. This allegation is related to the application for a declaration of sale in that it is contended that, if the Board concludes that A & P did commit such an unfair labour practice,



the appropriate remedy would include, in part, a finding of a sale even in circumstances which would otherwise not sustain such a finding.

135. Counsel for the individual complainants and for the Teamsters pointed to evidence which they submitted supported their position that the structure of the sale was motivated, at least in part, by an anti-Teamsters animus. For example, A & P did offer employment to the head office staff which were not unionized and did hire additional staff for its existing warehouses. Gaucher and Wood had a private conversation which resulted in an apparent deal to exclude the distribution centres; neither Gaucher nor Wood testified. An internal A & P memo spoke of the potential negatives of introducing a third culture into the A & P distribution centres; that subject was also raised by the RWDSU in a labour-management meeting. Counsel did concede that A & P had legitimate business reasons for not acquiring the distribution centres but argued that the “taint” theory applied to colour the entire transaction.

136. The Board agrees that the applicable test is what is commonly referred to as the “taint” theory. If any part of the motive for impugned conduct is for a reason prohibited under the Act, that is sufficient to sustain a finding of an unfair labour practice. The analysis in that regard is no different from the usual unfair labour practice cases wherein the Board determines whether the reasons for conduct are impermissible. The Act proscribes conduct by an employer which, inter alia, interferes with the formation, selection or administration of a trade union or which discriminates against an employee because of union membership.

137. There is a paucity of recent jurisprudence which analyses the taint theory in the context of an alleged sale of business. In *Metropolitan Parking*, supra, the Board noted that a sale of business finding does not depend on an improper motive as the statute is intended to preserve bargaining rights even in bona fide business transactions. In *Metropolitan Parking*, supra, the Board did comment that “collusive arrangements, or transactions explicitly designed to subvert bargaining rights have become much less common; and can, in any event, be dealt with under [the unfair labour practice provisions].” *Sun Parlour Greenhouse*, [1972] OLRB Rep. Jan. 94, *Intermountain Industries Ltd.*, [1975] 1 Can. LRBR 257 (B.C.L.R.B.); *Academy of Medicine*, [1977] OLRB Rep. Dec. 783 and *Humber College*, [1979] OLRB Rep. June 520 were referred to in that context. In *Academy of Medicine*, supra, the Board indicated that an employer may not terminate the entire business operation if the motive for so doing contravenes the Act:

“... It is difficult to conceive of conduct more destructive of these rights [under the Act] than a permanent closure of a business, based not upon legitimate business considerations but upon an employer’s simple refusal to operate with a trade union....”

138. The Board commented in *Kitchener-Waterloo Hospital*, supra, as follows:

“42. ... The form of a transaction may not be particularly illustrative of the real transaction. It is the substance of what occurred that is important. If it were otherwise, and the Board looked only to the surface details, employers would be able to structure events in legal form in a manner that would ensure that a ‘sale’ never occurred, even if in substance such a transaction had in fact resulted. Section 63 is designed to look beyond the outward structuring to the substance of the transaction, seen from the collective bargaining and labour relations perspective. It may well be, therefore, that the reasons for having made particular decisions as to the structuring of the transaction are relevant in a section 63 application in assessing the true heart and shape of the transaction. Evidence of why particular transaction events were so executed could well be relevant. ...”

139. One other case merits comment at this juncture. In *Sunnylea Foods*, supra, the Board affirmed the taint theory in examining the basis for the closing and selling of Sunnylea’s business. In that case, Sunnylea had been found to have committed unfair labour practices in the context of

the certification application and the owner openly reiterated his opposition to unions. However, the Board concluded on the evidence that the sale would have occurred with or without the presence of the trade union and was, therefore, only motivated by the economics of the situation.

140. The Board has noted earlier the voluminous documentation submitted in this matter. That documentation clearly supports the testimony of witnesses from A & P as to the reason for the structure of the deal. That reason is straightforward: A & P did not need the Steinberg distribution centres in order to service the additional stores which they hoped to acquire. A & P had 300,000 sq. ft. of unused warehouse space at its head office. The existing facilities at the West Mall and Vickers Road could be reconfigured and reorganized to handle the additional volumes. Indeed, it was this prospect of “synergies” in the acquisition of the stores and not the Steinberg distribution centres which made the deal attractive to A & P. In short, A & P’s business objectives in acquiring some or all of Steinberg’s retail supermarkets in Ontario were to increase A & P’s presence in that geographic area, provide a third banner for its operations and enhance the utilization of its existing distribution capacity. This theme of the opportunities for “synergies” in the acquisition of retail supermarkets and not the distribution centres resonates throughout the protracted negotiations between A & P and Steinberg from 1988 to the conclusion of the transaction in July 1990 and is consistent with the filings with government review bodies.

141. Further, that conclusion is supported by the conduct of A & P following the asset purchase transaction. Outside storage facilities were used on a temporary basis pending the installation of additional racking at the existing A & P warehouses. Existing space was reconfigured and reorganized to substantially increase capacity. Additional equipment, such as, forklift and pallet trucks, were purchased from the regular budget line. The transactions did not significantly affect prior supply arrangements except with respect to volume. The relationship between the A & P distribution centres and the buying department and data processing function was not changed. The new product items were added to the existing computerized system and handled as was other product with respect to orders, selection and distribution. A & P’s assessment that it did not need additional warehousing capacity to service the newly acquired stores was borne out in fact.

142. The allegations ascribe anti-Teamsters motivation to the structure of the transaction. The Board intends to deal with these assertions in more detail, particularly given the applicability of the taint theory wherein legitimate business motives may yet co-exist with improper reasons for impugned conduct.

143. It is critical to note at the outset, however, that what is here alleged is not anti-union animus. A & P is a highly unionized operation; it has bargaining relationships with several unions, including the RWDSU, the UFCW and the USWA. A & P agreed throughout the negotiations that its acquisition of the stores would result in successor status with respect to those stores; A & P did not resist the continued representation of those employees by their bargaining agent or the continued application of the collective agreements. With respect to the anticipated new hires in the A & P warehouses, A & P recognized that those employees would be members of the full-time or part-time bargaining units and represented by the RWDSU. In the Board’s view, this is a significant difference between the instant case and the context in which the jurisprudence has developed.

144. The Board intends to briefly review the negotiations sequence to determine whether that evinces an anti-Teamsters animus. In the Spring of 1988, A & P made several proposals to Steinberg for its Ontario retail supermarkets. One proposal included “dead rent” for the distribution centre facilities for a one year period to increase the attractiveness of A & P’s offer; A & P would not operate the distribution centres. A joint venture proposal with another company would have taken all the Steinberg retail supermarket operation, including the distribution centres, in



Ontario and Quebec. In that offer, A & P would have taken some of the stores in both Ontario and Quebec plus the Quebec distribution facility. The explanation given, that, if A & P was to enter the Quebec market, a Quebec distribution centre was needed, is rational and consistent with the other evidence. All of those proposals were rejected by Steinberg; the company was taken "out of play" in July 1988. There is nothing in the negotiations in this period which sustains the allegations.

145. In July 1989, in the midst of the take-over bid by Socanav, Gaucher was approached by A & P expressing interest in the Ontario retail supermarket operations. A letter indicating that A & P was prepared to be flexible in its position cannot reasonably be read to sustain a conclusion that A & P was prepared to take the distribution centres in the face of its continued assessment that such were not needed. In any event, this approach was rebuffed by Gaucher. There is no anti-Teamsters animus in this time frame.

146. In early 1990, in response to increasing pressure from the financial institutions, Gaucher was forced to consider the disposition of the Ontario retail supermarket operation. Negotiations between A & P and Gaucher/Steinberg resumed. The form of the negotiations was dictated by Gaucher's concerns for confidentiality; it is for this reason that the conversations excluded A & P Canada and involved a private meeting between Wood and Gaucher. As a result of that meeting, it appeared that a deal had been struck whereby A & P would take the head office employees (in addition to the majority of the store locations) but not acquire the distribution centres.

147. Counsel for the individual complainants and for the Teamsters emphasized this result as indicative of anti-Teamsters animus. The Board disagrees. A & P had legitimate business reasons for not wishing to acquire the distribution facilities; their position had been consistent from the initial negotiations with Steinberg in 1988. A & P testified as to its reasons for modifying its position with respect to the head office employees. The agreement permitted A & P to draw upon a considerable pool of managerial talent; A & P could selectively choose from amongst that pool, plus the clerical staff, to fill its needs. That aspect of the asset purchase provided advantages to both A & P and Steinberg. A & P could pick and choose amongst those employees so as to best satisfy its needs at a cost of assuming the severance obligations of those it rejected. In fact, approximately, one-half of those employees were subsequently terminated. For Steinberg, there was the release of its obligation to pay the requisite severance. The head office facility itself was not acquired by A & P. There is nothing sinister in A & P continuing to resist acquiring unneeded warehouse facilities or in resisting the assumption of the severance obligations with respect to the employees in the distribution operation. Resisting an increased purchase price (through the assumption of unneeded assets or severance for persons employed in that unneeded operation) cannot reasonably be equated with or indicative of anti-Teamsters animus.

148. The Board is satisfied that, given that the impetus for confidentiality originated with Gaucher and given the legitimate business reasons which underlay A & P's consistent position with respect to the warehouses, there is no negative inference to be drawn from the fact that Wood did not personally testify with respect to the private conversation with Gaucher. The apparent deal which resulted from the conversation was adequately explained by senior personnel from A & P and is consistent with the weight of the documentary evidence.

149. Moreover, that apparent "deal" in the Spring of 1990 fell apart as the parties were unable to agree with respect to price. The formula for calculating price had been agreed to but Steinberg persisted in attempting to include the warehouse facilities in the package for purposes of price; A & P continued to resist the inflated price for the retail stores which would have resulted. The letter from Wood to Gaucher dated April 2, 1990 and set out in paragraph 54 illustrates the



level at which negotiations were conducted. The critical factors were “multiple of book values”, and “multiple of earnings” (including “post tax earnings”) with A & P assuming the liability for the office and the administrative organization. The focus was on that level of “multiples” of various indicia and “liability for the office and administrative organization” (with respect to severance for employees not retained). This is far removed from anti-Teamster animus as a motivation for the structure of the deal. And, as noted, the “deal” fell apart. When the negotiations resumed in July 1990, Socanav initially continued its position regarding the inclusion of the warehouse assets in the book value but ultimately acceded to A & P’s position on pricing.

150. The Board intends to deal next with the three documents adverted to by counsel in support of the unfair labour practice allegations. It is accurate to note that, at a labour management meeting, the RWDSU communicated concerns expressed by some of its members with respect to the hiring of Steinberg employees. Management’s response was that those persons would be treated in the same way as other applicants. There is nothing in this which assists the allegations. The overview of alternative labour strategies in March 1990 consists of an objective assessment of the advantages and disadvantages of offering employment and concludes with a recommendation that the advantages outweigh the disadvantages. It is difficult to derive an anti-Teamsters animus from this; in a document which focused on labour strategies, there is a conspicuous absence of anti-Teamster motivation. That the recommendation was not accepted does not prove the allegations given the over-riding objective to secure the retail stores and the absence of need for additional warehouse facilities; the consistency of the weight of the documentary evidence and the oral testimony supports a conclusion that the deal was not structured to negate the bargaining rights of the Teamsters. Finally, in that regard, it appears that the document in question was not forwarded to the senior executives of A & P (U.S.) who conducted the negotiations until months after the apparent “deal” was struck in early 1990.

151. The internal document which characterized the Teamsters collective agreement as a negative must be placed in context. On its face, the document only obliquely refers to the Teamsters contract under “other”. Its placement follows an extensive listing under “rents” and a section on “equipment”. The category “other” includes notations that the meat operation is non-economic and has union bumping rights to the stores, the office facility is redundant and the grocery warehouse is redundant, all prior to the Teamsters reference. The “union bargaining rights” noted are not those of the Teamsters. The document then has an abbreviated reference to “Combines Act”, “support” and “transportation”. Byars testified with respect to the document. The notes are his and were prepared shortly after the receipt of the McLeod Young Weir offering circular in 1988. Byars followed the circular format and jotted down his thoughts. He stated that his concern arose from the fact that the RWDSU recognition clause covered that same geographic area. Byars evidence was not shaken on that point and is consistent with the format of the document itself. The Board accepts the explanation for the reference and is satisfied that there is demonstrated no anti-Teamsters animus in that reference.

152. Several other matters must be noted with regard to the alleged anti-Teamsters animus. A & P did not acquire the warehouse, transportation and maintenance operations; the UFCW and not the Teamsters represented the maintenance employees. Thus, even on its face, the deal did not result in the termination of only members of the Teamsters bargaining unit. While the “non-unionized” employees at head office were offered employment by A & P, that was done only to permit A & P to select from that pool of employees those who best fit the A & P operation; approximately one-half were subsequently terminated. Thus, again, others beyond the Teamsters bargaining unit members had their continued employment affected as a result of the transaction.

153. While an anti-Teamster animus was asserted, there was an absence of evidence as to

why there should be such an animus. There were references by counsel to the Teamsters “reputation” but, significantly, there was no evidence of any animosity between A & P and the Teamsters even though A & P (U.S.) has collective bargaining relationships with that union. The Teamsters would be reasonably expected to be in a position to call such evidence if it existed. The Teamsters were characterized by one A & P witness as effectively representing their members. That description is a long way from evincing an anti-Teamsters animus. As noted, the instant allegations are not like the general “anti-union animus” cases; A & P is a highly unionized environment. The other unions with which A & P has mature collective bargaining relationships include the UFCW, the RWDSU and the USWA. None of those organizations may be described as “company unions”. The Board is not prepared to assume that the Teamsters are any more effective at representing their members than are those other trade unions. In the context of an asserted animus against a specific trade union, there must be cogent evidence of that specific proposition. In the instant case, there was no such evidence.

154. In the Board’s view, the evidence amply justifies a conclusion that there was no anti-Teamsters animus in the structure of the transaction. The Board has examined the substance of the transaction and the proffered explanations for the structure of the asset purchase agreement in the context of the documentary material, the credibility of the witnesses and the taint theory. The Board is satisfied that the only reasons for the exclusion of the Steinberg warehousing and transportation operations from the transaction were the business reasons asserted by A & P that those operations were not needed. In reaching its conclusion, the Board has considered the matters noted in this section and both separately and in conjunction with the allegations dealt with under the hiring of additional warehouse employees.

#### The Hiring of Additional A & P Warehouse Employees

155. The Board approaches the issue of the hiring by A & P in the context of the taint theory and, as in the just-noted section, considers the evidence with respect to the hiring separately and in conjunction with the issues regarding the structure of the transaction. The Board is cognizant of the fact that it may well be that it is only taken together that the evidence would sustain the allegations.

156. The relevant jurisprudence need only be adverted to briefly. In *Metropolitan Parking*, supra, the respondent received applications and conducted interviews but then ignored evidence of past experience, qualifications and references and selected at random from amongst the applications. The Board had no difficulty in concluding that the conduct of the respondent constituted an unfair labour practice. The Board determined that the respondent resorted to an irrational selection process since consideration of relevant experience and qualifications would have resulted in the hiring of a substantial number of the employees of the prior contractor. While the Board acknowledged that the respondent was entitled to hire a qualified work force and to unilaterally set terms and conditions of employment, the Board emphasized that the respondent, in so doing, was not entitled to exclude persons for reasons of an anti-union animus. To similar effect, is the decision in *Sunnylea Foods*, supra, wherein the Board determined that the respondent’s hirings were influenced by the trade union affiliation of the former employees; see also, *Daynes Health Care*, supra. Likewise, in *Kitchener-Waterloo Hospital*, supra, the Board concluded that the hospital had altered its position with respect to giving preference to the nurses only because it was felt that the fact of their unionization would create administrative problems. The employment decision turned on the union membership of the nurses, contrary to the rights conferred by the Act.

157. It is also useful to note the decision in *Metropolitan Life*, supra, where the Board, in dealing with the allegation of discrimination against union members in hiring, found that the



respondent followed its usual policy in advertising for new hires and utilized its own hiring criteria. The Board concluded that there was a “conspicuous absence of evidence” of the employees of the former contractor agreeing to the respondent’s terms of employment but having their applications refused. The Board did not consider that the continuation of the respondent’s existing hiring practices was improper and did not infer an unlawful motive in the failure to make a “special job offer” to those employees of the former contractor.

158. One final decision is helpful before turning to the instant facts. In *New Holiday Tavern*, supra, the successor employer was not bound by the conditions of employment in the expired collective agreement because of the timing of the sale. Further, the Board determined that, for there to be a contravention of the Act through hiring practices which discriminated on the basis of union membership, there must be applications for employment from the individuals. To paraphrase the statute, for there to be a “refusal to employ” for reasons proscribed by the Act, there must be an “application for employment”. The Board returns to this issue infra.

159. The Board first deals with the A & P hiring process. It is not intended herein to do more than touch upon the relevant factual findings. A & P anticipated hiring additional employees to handle the increased volumes resulting from the acquisition of the majority of the Steinberg store locations in Ontario. The documentary and viva voce evidence indicated the numbers of new employees, by classification, which were anticipated in the various distribution facilities. The evidence indicated a training period would be required. The actual process followed, including the time lines, closely followed the planning exercise.

160. At first blush, it might seem puzzling as to why the Steinberg warehouse personnel were not simply “moved over” to A & P. There is no suggestion that the Steinberg warehouse employees were other than a trained and competent work force. However, several factors complicated a “first impression” solution to A & P’s increased hiring needs. The Board regards those factors as the real reasons for the eventual placement of only a handful of Steinberg employees in the A & P warehouses. The Board is satisfied that the fact of the trade union affiliation of the Steinberg warehouse employees played no part in the process.

161. The Steinberg employees were required to remain at the Steinberg distribution centres until the closing of the asset purchase agreement. Then, at the moment of closing, A & P had to assume the responsibility of supplying the newly acquired stores. This reality flowed solely from the nature of the commercial transaction and the respective obligations of the vendor and purchaser. Under the agreement, Steinberg was obligated to maintain the stores until closing according to “normal business practice”. A & P, to ensure there was no depletion of high velocity items in the interim period before closing, purchased the inventory. As of the closing date, A & P had to have in place a trained work force ready to carry out substantial additional responsibilities. In those circumstances, it was reasonable and necessary for A & P to commence the hiring process well in advance of closing. One significant complicating factor, then, was the conflict between the A & P imperative of hiring before the Steinberg warehouse employees would be available. Even if it was possible to schedule training around the Steinberg warehouse employees’ shift schedules, the operation would have been complex. More critically, there is no basis in the statute for imposing such a requirement on A & P where A & P was not a successor employer in respect of the Steinberg warehouse employees. In the Board’s view, A & P acted solely from business imperatives and not to penalize the Steinberg warehouse employees because of their union affiliation.

162. While it was open for Steinberg distribution centre employees to leave Steinberg before the closing date, their reasons for not doing so are eminently understandable. At Steinberg, the warehouse employees held full-time positions at relatively high wage rates. At A & P, the openings



were for part-time positions for substantially less remuneration. In the early rounds of hiring, new part-time employees were informed that, if their probationary period was successful, there was a good likelihood of their achieving full-time status following the closing date. However, the prospect of part-time status with the possibility of full-time later on was far less attractive than remaining at the Steinberg warehouses until closing. Unfortunately, by that point, the bulk of the full-time positions were filled and, essentially, only part-time personnel were needed.

163. The requirement of immediate availability was standard A & P practice. Further, the existence of a training period was usual and, in the circumstances, not unreasonable. While the Steinberg distribution centre employees were familiar with their operation, the evidence indicated that the A & P operation differed significantly. Although the function of both warehouse operations was the same, the process by which the functions were carried out differed. Thus, there is no doubt that the Steinberg warehouse personnel would have required training. Whether or not they would have been "more quick on the uptake" is uncertain but, even if so, there is no reasonable basis on which to conclude that the Steinberg warehouse employees should have been treated preferentially, with respect to availability and training requirements, in contrast to other applicants.

164. A further complicating factor was the existence of the RWDSU collective agreements to which A & P was bound. The full-time agreement required that new vacancies first be posted in that unit. That is not an unusual type of provision in a collective agreement and is designed to ensure existing employees have an opportunity for promotion to preferable job classifications. In the instant case, that posting process was followed and resulted in the filling of all positions except those for order selectors. The collective agreements required that preference for full-time positions then be given to those in the part-time bargaining unit. That, again, may not be described as uncommon. The internal posting process occupied several weeks and was detailed earlier.

165. That procedure - required by the RWDSU collective agreements - negatively impacted on new applicants and especially the Steinberg warehouse employees. One result of the internal postings process was that the preferable (and higher paying) job classifications were not available to the new hires. Only order selectors were needed. For the Steinberg distribution centre personnel in particular, this added to the unattractiveness of the advertised positions. As well, the significant numbers of internal transfers increased the complexity of the training period. That is, A & P not only had to train the new hires but also the internally transferred employees. The Board is persuaded that the training period outlined in the documentary evidence was not inappropriate in the circumstances and was not designed to thwart the hiring of the Steinberg employees of the distribution facilities.

166. The Board accepts the testimony of the A & P witnesses that the union affiliation of the Steinberg distribution centre employees was not taken into account. That evidence was credible, in part, because of its consistency with the documentary material. At a labour management meeting, when the RWDSU representatives expressed concerns of some of their members regarding the hiring of Steinberg employees, A & P management responded that applications from Steinberg warehouse personnel would not be treated differently. In fact, there is no evidence that they were treated differently; there is no doubt that those applications were not treated preferentially (see below). However, that lack of preferential treatment is not contrary to the Act.

167. The Board concludes that the application and training process was in conformance with the usual approach of A & P to hiring. In the Board's view, there is no basis in the Act for requiring A & P to depart from its usual practice in that regard. The process followed cannot reasonably be described as a sham or charade intended to keep out the Steinberg warehouse employees.

168. The Board next returns to the issue of the dearth of applications from Steinberg ware-

house employees. In the Board's opinion, this is not merely a matter of mitigation, as asserted by Teamsters counsel. For there to be an unfair labour practice, there must be applications or other compelling evidence that the Steinberg warehouse employees wanted the available jobs at A & P and the failure to hire those persons in circumstances which reasonably supports an inference the decisions were motivated by their trade union affiliation: see *New Holiday Tavern, supra*. In the face of an open advertising process, there was a marked lack of interest expressed by the Steinberg warehouse employees. Although their reasons may well have been understandable (see paragraphs 162 and 165), the result is the absence of evidence supporting the allegations. The Board does not consider the evidence of several of the individual complainants to the effect that a "security guard" told them the Steinberg was not receiving applications at that point as demonstrating an anti-Teamsters animus. Those hearsay comments are consistent with the evidence of A & P witnesses that there was a lull in the applications process until the company had a better "take" on the numbers hired, their likely retention figures and the numbers of additional employees needed. The Board is not prepared to infer a sinister motive in the temporary hiatus in accepting applications given the complexity of the internal and external posting and hiring process outlined above.

169. Likewise, the testimony of Ricchio that he was told that all Steinberg applications were being put to one side is consistent with the evidence of A & P's witnesses that all applicants who indicated on their applications that they were not immediately available for work were told that their applications would not be processed further until they informed A & P that they were so available. The "set aside" comment, in the Board's view, was not predicated on the applicant's status as a Steinberg warehouse employee but on the fact that those employees, for understandable reasons, chose to continue at Steinberg until the closing date and, hence, were not immediately available for employment. Applicants with no Teamsters affiliation but who were not immediately available for employment were treated in similar fashion by A & P.

170. The letter of October 12, 1990 from Dunne to Investment Canada is to similar effect. Dunne comments on the unfortunate situation of the Steinberg warehouse personnel but notes that, to date, one twenty-four of those persons had applied for employment at A & P and "none of them were prepared to accept immediate employment with A & P and prejudice their Steinberg severance arrangements".

171. Documentary evidence summarized the applications of Steinberg warehouse employees and their disposition. As of January 17, 1991, there were forty-six applications. Of those, thirteen were hired and two quit; of the eleven remaining, two were full-time probationary and nine were part-time probationary. Of those rejected for employment, the reasons given included: not interested in part-time, not appear for interview, not available for medical reasons, no phone numbers or a wrong phone number on the application. There is no compelling evidence that the purported reasons were not the actual reasons for the rejections. Further, there is no evidence on which to reasonably conclude that Michailidis, who was hired and terminated during his probationary period, was terminated for reasons other than his inability to meet the established A & P productivity standards.

172. The Board regards the circumstances herein as resembling those in *Metropolitan Life, supra*, in that the gravamen of the complaint is that A & P did not make special arrangements to hire the Steinberg warehouse personnel or give preference in hiring to those employees. A & P is not a successor employer with respect to the Steinberg warehouse facilities; if such had been the case, A & P would have been bound by the extant collective agreement unless and until the Board declared otherwise. In the absence of a successor employer situation, A & P was not obligated to offer employment to the Steinberg distribution centre employees provided that A & P conducted its hiring without discriminating against those Steinberg employees because of their union affilia-



tion. The Board is satisfied that A & P followed its usual hiring process in accordance with its obligations under the full- and part-time collective agreements with the RWDSU. In following that process, A & P did not discriminate against the Steinberg warehouse employees. The statute does not impose any greater obligation.

173. The Board does not consider the evidence that a Steinberg warehouse employee was given the “cold shoulder” when he approached Wilson Transport for employment as relevant; Wilson Transport is an independent company not a party to these proceedings and against whom no allegations of impropriety have been made.

174. Having regard to the foregoing, the Board dismisses the unfair labour practice allegations with respect to the hiring of additional warehouse employees by A & P. As noted, although the Board has not here reiterated its analysis with respect to the structure of the transaction, the Board also has considered together the evidence relevant to both unfair labour practice allegations. The Board has concluded that the allegations are not sustained on that evidence. In the circumstances, the Board need not deal further with the complex issues involved in the appropriate remedial relief if the unfair labour practice allegations had been sustained.

### Conclusion

175. The Board, in its foregoing analysis, has carefully considered the evidence, both documentary and viva voce, in the context of the able and thorough submissions of counsel. The Board is satisfied that the allegations impugning the negotiations between Steinberg and the Teamsters, the structure of the asset purchase agreement and the hiring by A & P of additional employees in its distribution facilities should be dismissed. The Board is further satisfied that the applications pursuant to sections 63 and 1(4) should be dismissed as well.

### **CONCURRING OPINION BOARD MEMBER R. R. MONTAGUE; October 2, 1995**

1. I concur with the legal conclusion reached in the majority’s decision, but in my humble opinion feel that it is morally wrong.

2. The parties could have and should have been made to find an amicable way of integrating these fully experienced warehouse workers, at the very least into “job offers” in the operational scheme of the deal, thus going a long way to help, and I quote:

“promote harmonious labour relations, industrial stability and ongoing settlement of differences between employers and trade unions”.

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## COURT PROCEEDINGS

**3248-94-R (Court File No. 396/95) Meadowcroft Holdings Inc., c.o.b. as Execu-Care Nursing Services, and Meadowcroft Limited Partnership c.o.b. as Meadowcroft Place (Guelph), Applicant v. Service Employees International Union Local 532 affiliated with the A.F. of L., C.I.O., C.L.C, and the Ontario Labour Relations Board, the Right Honourable Elizabeth Witmer, Minister of Labour for Ontario and 5M Management Services Ltd., Respondents**

**Bargaining Unit - Certification - Judicial Review - Union applying to represent employees of retirement home in Guelph - Employer submitting that bargaining unit should include group of "floating" maintenance and housekeeping workers, who work out of head office and who service some 25 retirement homes owned by employer, when those maintenance employees work at Guelph home - Board determining that maintenance and housekeeping employees who float to different homes should not be included in bargaining unit - Certificate issuing - Application for judicial review dismissed by Divisional Court**

Board decision reported at [1995] OLRB Rep. March 324.

*Ontario Court (General Division)(Divisional Court), Southey, O'Brien and Corbett JJ., October 10, 1995.*

**The Court (endorsement):** In our opinion the Board correctly applied itself to the determination of the appropriate bargaining unit, and was under no obligation to apply the 30/30 Rule in making that determination. The Board's decision to exclude "floating" employees was not patently unreasonable, and there was no jurisdictional error. The application is dismissed with costs. The costs of the union are hereby fixed at \$2,000. The Board does not ask for costs.

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**3185-93-U (Court File No. 514) Robert Ross, Applicant v. National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada) and its Local 195, National Auto Radiator Mfg. Co. Ltd. and The Ontario Labour Relations Board, Respondents**

**Discharge - Duty of Fair Representation - Judicial Review - Unfair Labour Practice - Applicant alleging that union breached its duty of fair representation by failing to process his discharge grievance to arbitration - Board not satisfied that applicant's 23 month delay in bringing application satisfactorily explained - Board exercising its discretion against inquiring into application - Application dismissed - Application for judicial review dismissed by Divisional Court**

Board decision not reported.

*Ontario Court of Justice (Divisional Court), O'Brien, McDermid and Corbett JJ., October 20, 1995.*

**O'Brien J. (endorsement):** The OLRB has discretionary power to determine whether to inquire into an application or decline further consideration of the matter. In exercising that discretion the

OLRB assumed the delay was only from December of 1991 to November 1993 which favoured the applicant. It concluded that delay caused considerable harm to both the union and the employer and was not satisfactorily explained.

The standard of review is one of patent unreasonableness. The OLRB decision was completely reasonable under the circumstances and there is no doubt it satisfies the applicable standard of review of this type.

Application dismissed.

Costs of \$2,000.00 each to both union and employer.







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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 1995

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**2868-94-R:** Ontario Secondary School Teachers' Federation (Applicant) v. The Board of Education for the City of Toronto (Respondent) v. Canadian Union of Public Employees, Local 63 (Intervener)

Unit: "all employees of the Board of Education for the City of Toronto in the Municipality of Metropolitan Toronto in levels 1 to 6 inclusive of schedule II, save and except persons who are employed in the Employee Relations Department, persons for whom any trade union held bargaining rights as of November 10, 1994 and including as well everyone listed in Schedule A" (128 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2906-94-R:** United Steelworkers of America (Applicant) v. Greenberg Stores Limited (Respondent)

Unit: "all employees of Greenberg Stores Limited in the Town of Marathon, save and except Assistant Manager, and persons above the rank of Assistant Manager" (33 employees in unit) (*Clarity Note*)

**1008-95-R:** Ontario Nurses' Association (Applicant) v. Royalcrest Life Care Group (Respondent) v. Group of Employees (Objectors)

Unit: "all registered and graduate nurses employed in a nursing capacity by Royalcrest Life Care Group c.o.b. as Townsview Lifecare Centre in the City of Hamilton, save and except the Director of Care and persons above the rank of Director of Care" (14 employees in unit)

**1311-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Quality Masonry (Respondent)

Unit: "all construction labourers in the employ of Quality Masonry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Quality Masonry in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**1394-95-R:** Ontario Public Service Employees Union (Applicant) v. Community Resource Services (Ontario) (Respondent)

Unit: "all employees of Community Resource Services (Ontario) in the Regional Municipality of Halton, save and except Assistant Directors, persons above the rank of Assistant Director, Supervisor of Community Programs, Property Manager, Administration Secretary, students engaged in a co-operative training program and the Payroll Clerk" (47 employees in unit) (*Having regard to the agreement of the parties*)

**1798-95-R:** International Union of Bricklayers and Allied Craftsmen Local #20, Ont. (Applicant) v. Sweeting Masonry Limited (Respondent)

Unit: "all bricklayers and bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of Sweeting Masonry Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all bricklayers and bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of Sweeting Masonry Limited in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of

Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

**1804-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Bre-Ex Limited (Respondent)

Unit: “all employees in the employ of Bre-Ex Limited engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in all sectors of the construction industry in the Counties of Essex and Kent excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (12 employees in unit)

**1864-95-R:** United Steelworkers of America (Applicant) v. Narco Canada Inc. (Respondent)

Unit: “all employees of Narco Canada Inc. in the City of Burlington, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (43 employees in unit) (*Having regard to the agreement of the parties*)

**1879-95-R:** Canadian Union of Public Employees Local 79 (Applicant) v. The Municipality of Metropolitan Toronto (Respondent)

Unit: “all security officers employed by The Municipality of Metropolitan Toronto in the Municipality of Metropolitan Toronto, save and except shift-forepersons, persons above the rank of shift-foreperson and persons in bargaining units for which any trade union held bargaining rights as of August 11, 1995” (6 employees in unit) (*Having regard to the agreement of the parties*)

**1881-95-R:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Tendercare Nursing Home Limited, c.o.b. as Tendercare Living Centre (Respondent)

Unit: “all employees of Tendercare Nursing Home Limited, c.o.b. as Tendercare Living Centre in the Municipality of Metropolitan Toronto, regularly employed for not more than 24 hours per week, save and except Registered Nurses, Physiotherapist, Occupational Therapist, supervisors or foremen, persons above the rank of supervisor or foreman, office and clerical staff and persons in bargaining units for which any trade union held bargaining rights as of August 11, 1995” (44 employees in unit) (*Having regard to the agreement of the parties*)

**1899-95-R:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Ottawa Hunt and Golf Club, Limited (Respondent)

Unit: “all employees of Ottawa Hunt and Golf Club, Limited in the City of Ottawa, save and except Assistant Managers, persons above the rank of Assistant Manager, office, clerical and agronomy staff” (53 employees in unit) (*Having regard to the agreement of the parties*)

**1914-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Rideau Crane Rentals (Respondent)

Unit: “all employees in the employ of Rideau Crane Rentals engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Rideau Crane Rentals in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees in the employ of Rideau Crane Rentals engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Rideau Crane Rentals in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the

industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1937-95-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of North Dumfries (Respondent)

Unit: "all employees of The Corporation of the Township of North Dumfries in the Public Works (Roads), Parks and Recreation Departments, save and except the Superintendent of Public Works (Roads) and the Director of Parks and Recreation, persons above the rank of Superintendent of Public Works (Roads) and Director of Parks and Recreation, office staff and students employed in the summer playground program" (12 employees in unit) (*Having regard to the agreement of the parties*)

**1945-95-R:** United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Abor-Ron Construction Services Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Abor-Ron Construction Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Abor-Ron Construction Services Inc. in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1963-95-R:** United Food and Commercial Workers International Union, AFL-CIO-CLC (Applicant) v. Hertz Canada Limited (Respondent)

Unit: "all mechanics and utility persons employed by Hertz Canada Limited, Rent-a-Car Division located at 2 Convair Drive, in the City of Etobicoke, save and except supervisors and persons above the rank of supervisor" (6 employees in unit) (*Having regard to the agreement of the parties*)

**1964-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Lafarge Canada Inc. (Respondent)

Unit: "all employees of Lafarge Canada Inc. at Brandes Gravel Pit at 2125 Great Northern Road in the City of Sault Ste. Marie, save and except foreperson, persons above the rank of foreperson, security guards, office, clerical, sales staff and technical personnel" (7 employees in unit) (*Having regard to the agreement of the parties*)

**1966-95-R:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. 960-990 Ontario Inc. c.o.b. as Cliffs Welding & Pressure Tapping (Respondent)

Unit: "all boilermakers and boilermakers' apprentices in the employ of 960-990 Ontario Inc. c.o.b. as Cliffs Welding & Pressure Tapping in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all boilermakers and boilermakers' apprentices in the employ of 960-990 Ontario Inc. c.o.b. as Cliffs Welding & Pressure Tapping in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1970-95-R:** Teamsters Local Union No. 419 (Applicant) v. 1059288 Ontario Inc. O/A Young Drivers of Canada (Toronto) (Respondent)

Unit: "all employees of 1059288 Ontario Inc. O/A Young Drivers of Canada (Toronto) in the Municipality of Metropolitan Toronto, save and except Managers, persons above the rank of Manager and employees in bargaining units for which any trade union held bargaining rights as of August 21, 1995" (5 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1983-95-R:** Canadian Security Union (Applicant) v. Intercon Security Limited (Respondent)



Unit: "all security officers in the employ of Intercon Security Limited at 1 Yorkgate Blvd. (Yorkgate Mall) in the City of North York, save and except supervisors and persons above the rank of supervisor" (4 employees in unit) (*Having regard to the agreement of the parties*)

**1985-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Canadian Pacific Hotels Corporation (Chateau Laurier Hotel) (Respondent)

Unit: "all parking-cashiers employed by Canadian Pacific Hotels Corporation c.o.b. as Chateau Laurier Hotel in the City of Ottawa, save and except supervisors and persons above the rank of supervisor" (7 employees in unit) (*Having regard to the agreement of the parties*)

**1989-95-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 141 (Applicant) v. Berdan Holdings Inc. (Respondent)

Unit: "all employees of Berdan Holdings Inc. c.o.b. as Maple Village Retirement Home in the City of London, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (25 employees in unit) (*Having regard to the agreement of the parties*)

**1991-95-R:** Kingston Area Taxi Staff Association (K.A.T.S.A) Local 01 (Applicant) v. Modern Taxi Cab Ltd. (Respondent)

Unit: "all dispatchers and telephone operators of Modern Taxi Cab Ltd. in the City of Kingston, save and except Vice President and persons above the rank of Vice President" (15 employees in unit) (*Having regard to the agreement of the parties*)

**1995-95-R:** Christian Labour Association of Canada (Applicant) v. Triple H Paving Stone Inc. (Respondent)

Unit: "all construction labourers in the employ of Triple H Paving Stone Inc. in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton" (2 employees in unit)

**1996-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Belfast Fruit Inc., c.o.b. as St. Laurent Fruit and Vegetables (Respondent)

Unit: "all employees of Belfast Fruit Inc., c.o.b. as St. Laurent Fruit and Vegetables at 1010 Belfast Road in the Regional Municipality of Ottawa, save and except Department Managers, persons above the rank of Department Manager, Head Cashier, Assistant Head Cashier, office and clerical staff" (39 employees in unit) (*Having regard to the agreement of the parties*)

**2007-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Interior Truck Trim (Eastern) Limited (Respondent)

Unit: "all employees of Interior Truck Trim (Eastern) Limited, in the City of St. Thomas, save and except supervisors, persons above the rank of supervisor, office, sales and clerical staff" (92 employees in unit) (*Having regard to the agreement of the parties*)

**2031-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Joe Smith Excavating and Haulage (Respondent)

Unit: "all employees in the employ of Joe Smith Excavating and Haulage engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Joe Smith Excavating and Haulage in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees in the employ of Joe Smith Excavating and Haulage engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Joe Smith Excavating and Haulage in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the

United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2033-95-R:** Christian Labour Association of Canada (Applicant) v. Devonshire Community Living Centers Inc. (Respondent)

Unit: "all employees of Devonshire Community Living Centers Inc. in the Regional Municipality of Waterloo, save and except Registered and Graduate Nurses, Director of Nursing, Administrator, Supervisors, persons above the rank of supervisor, office and clerical staff" (25 employees in unit) (*Having regard to the agreement of the parties*)

**2083-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. C.M.W. Manufacturing Ltd. (Respondent)

Unit: "all employees of C.M.W. Manufacturing Ltd. in the Town of Ingersoll, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (44 employees in unit) (*Having regard to the agreement of the parties*)

**2117-95-R:** The Canadian Union of Public Employees (Applicant) v. Kerry's Place Autism Services (Scott's Place Group Home - Oshawa House) (Respondent)

Unit: "all employees of Kerry's Place Autism Services (Scott's Place Group Home - Oshawa House) in the City of Oshawa, save and except the Assistant Director, persons above the rank of Assistant Director and Secretary to the Program Director" (14 employees in unit) (*Having regard to the agreement of the parties*)

**2119-95-R:** Canadian Union of Public Employees (Applicant) v. The Essex County Roman Catholic Separate School Board (Respondent)

Unit: "all employees of The Essex County Roman Catholic Separate School Board in Essex County of the Computer Services Department, save and except the Systems Manager (Information Technology) and persons above the rank of Systems Manager (Information Technology) and any person for whom a trade union held bargaining rights as of August 30, 1995" (8 employees in unit) (*Having regard to the agreement of the parties*)

**2126-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent)

Unit: "all employees of Zellers Inc. employed at its store located at University Mall, 2650 Tecumseh Road West in the City of Windsor, save and except Supervisors/Group Merchandisers, persons above the rank of Supervisor/Group Merchandiser, Loss Prevention Officers, Personnel Clerks, Pharmacy Managers, Graduate and Undergraduate Pharmacists, including Pharmacy Interns and Apprentice Pharmacists, and students employed in a co-operative work program" (90 employees in unit) (*Having regard to the agreement of the parties*)

**2134-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Norm Brandon Ltd. (Respondent)

Unit: "all construction labourers in the employ of Norm Brandon Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Norm Brandon Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2142-95-R:** United Steelworkers of America (Applicant) v. Tora Investments Inc. (Respondent)

Unit: "all employees of Tora Investments Inc. in the City of St. Catharines, save and except Assistant Plant Manager, persons above the rank of Assistant Plant Manager, office, clerical and sales staff" (47 employees in unit) (*Having regard to the agreement of the parties*)

**2148-95-R:** Ontario Nurses' Association (Applicant) v. North Algoma Health Organization (Respondent)



Unit: “all paramedical employees of the North Algoma Health Organization in the Town of Wawa, save and except supervisors and persons above the rank of supervisor” (5 employees in unit) (*Having regard to the agreement of the parties*)

**2150-95-R:** Labourers’ International Union of North America, Local 183 (Applicant) v. Empire Maintenance Industries Inc. (Respondent)

Unit: “all employees of the responding party engaged in cleaning and maintenance at The Bay Store, 3401 Dufferin Street in the Municipality of Metro Toronto, save and except non-working forepersons, persons above the rank of non-working foreperson, office and sales staff” (7 employees in unit) (*Having regard to the agreement of the parties*)

**2151-95-R:** Ontario Public Service Employees Union (Applicant) v. Norfolk General Hospital (Respondent)

Unit: “all Medical Laboratory Technologists and Medical Laboratory Technicians regularly employed for not more than 24 hours per week by Norfolk General Hospital in its medical laboratories in the Town of Simcoe, save and except Assistant Chief Technologist, persons above the rank of Assistant Chief Technologist, laboratory technology students and persons for whom any trade union held bargaining rights as of August 31, 1995” (5 employees in unit) (*Having regard to the agreement of the parties*)

**2163-95-R:** International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, Local 357 (Applicant) v. Wilfred Laurier University (Respondent)

Unit: “all stage employees of Wilfred Laurier University in the Regional Municipality of Waterloo, save and except Managers and persons above the rank of Manager” (2 employees in unit) (*Having regard to the agreement of the parties*)

**2168-95-R:** Service Employees Union, Local 183 (Applicant) v. 681707 Ontario Limited c.o.b. as Cobourg Retirement Residence (Respondent)

Unit: “all employees of 681707 Ontario Limited c.o.b. as Cobourg Retirement Residence in the Town of Cobourg, save and except Managers, persons above the rank of Manager, office and clerical staff” (13 employees in unit) (*Having regard to the agreement of the parties*)

**2171-95-R:** Christian Labour Association of Canada (Applicant) v. Triple H Concrete Products Inc. (Respondent)

Unit: “all construction labourers in the employ of Triple H Concrete Products Inc. in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin” (4 employees in unit)

**2172-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Olsonite Company Limited (Respondent)

Unit: “all employees of Olsonite Company Limited in the Town of Tilbury, save and except foremen, persons above the rank of foreman, office and sales staff, quality control personnel and students employed during the school vacation period” (28 employees in unit) (*Having regard to the agreement of the parties*)

### **Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**1376-95-R:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Toronto Musicians’ Association (Respondent) v. Office and Professional Employees International Union, Local 343 (Intervener)

Unit: “all employees of the Toronto Musicians’ Association in the Municipality of Metropolitan Toronto, save and except Business Representatives, Assistant Office Manager, Office Manager and persons above the rank of Assistant Office Manager” (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	9
Number of persons who cast ballots	7
Number of segregated ballots cast by persons whose names appear on voters’ list	7
Number of ballots marked in favour of applicant	7



**1743-95-R:** IWA - Canada (Applicant) v. Elgin Handles Limited (Respondent) v. Elgin Handles Employees' Association (Intervener)

Unit: "all employees of Elgin Handles Limited, save and except one working foreman in each department, persons above the rank of foreman, office and sales staff, and janitor" (41 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	34
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	34
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	29
Number of ballots marked in favour of intervener	4

**1865-95-R:** Power Workers' Union, CUPE Local 1000 (Applicant) v. Milton Hydro-Electric Commission (Respondent) v. International Brotherhood of Electrical Workers, Local 636 (Intervener)

Unit: "all employees of the Milton Hydro-Electric Commission, save and except foreman/supervisors, persons above the rank of foreman/ supervisors, manager's secretary, also persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, students employed on a co-operative training program, and individuals employed on a government sponsored program" (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	12
Number of ballots marked in favour of intervener	9

**Bargaining Agents Certified Subsequent to a Post-Hearing Vote**

**1262-95-R:** Ontario Public Service Employees Union (Applicant) v. Lutheran Community Care Centre of Thunder Bay (Respondent)

Unit: "all employees of the Lutheran Community Care Centre of Thunder Bay, in the City of Thunder Bay, save and except Pastoral Care Workers (Chaplains), Executive Secretary, Supervisors and persons above the rank of Supervisor" (22 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	7

**1432-95-R:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. International Care Corporation (Respondent)

Unit: "all employees of International Care Corporation employed at Forest Hill Place, in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, and activity director" (65 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	71
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48

Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	21

### **Applications for Certification Dismissed Subsequent to a Pre-Hearing Vote**

**1439-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Haefely Trench, Division of BBA Canada Limited (Coil Products Division) (Respondent)

Unit #1: "all employees of Haefely Trench, Division of BBA Canada Limited (Coil Products Division) in the City of Scarborough, save and except supervisors, persons above the rank of supervisor, office staff, research and development staff, drafting staff, design engineers, sales staff and students employed during the school vacation period" (200 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	201
Number of persons who cast ballots	201
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	201
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	57
Number of ballots marked against applicant	142

**1650-95-R:** Canadian Union of Public Employees (Applicant) v. Versa Services Ltd. (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener)

Unit #1: "all employees of Versa Services Ltd. employed in the Housekeeping Department at the Montfort Hospital in the City of Ottawa, save and except Supervisors, persons above the rank of Supervisor and Students employed during the school vacation period" (39 employees in unit)

### **Applications for Certification Dismissed Subsequent to a Post-Hearing Vote**

**2198-94-R:** International Union of Bricklayers and Allied Craftsmen Local #2, Ontario and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. 888851 Ontario Limited c.o.b. as Bell General Contractors (Respondent)

Unit: "all bricklayers, bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of 888851 Ontario Limited c.o.b. as Bell General Contractors in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all bricklayers, bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of 888851 Ontario Limited c.o.b. as Bell General Contractors in all sectors of the construction industry excluding the industrial, commercial, and institutional sector in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foreman" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	0

**0378-95-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Corporation of the Township of Gosfield North (Respondent)

Unit: "all employees of the Corporation of the Township of Gosfield North, in the Township of Gosfield North, save and except Administrator and persons above the rank of Administrator, Deputy Clerk/Deputy Treasurer, Utilities Commissioner/Building Inspector, Manager and Township Engineer" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
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Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	3

**0834-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Don Valley North Lexus Toyota (Respondent)

Unit: "all employees of the responding party working at 3120 Steeles Avenue East in the City of Markham, save and except team leaders, those above the rank of team leader, office, sales, service advisors, clerical staff and students employed during the summer vacation" (36 employees in unit) (*Having regard to the agreement of the parties*)

**1367-95-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Laidlaw Environmental Services Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)

Unit: "all employees of Laidlaw Environmental Services Ltd. working at or out of the company's waste treatment facility near Corunna, save and except supervisors, persons above the rank of supervisor, dispatchers, office, technical and sales staff, students employed during the school vacation period, and persons for whom any trade union held bargaining rights as of July 4, 1995" (61 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	61
Number of persons who cast ballots	56
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	56
Number of ballots marked in favour of applicant	23
Number of ballots marked in favour of intervener	33

**1419-95-R:** Canadian Union of Public Employees (Applicant) v. 1024436 Ontario Limited c.o.b. as Charms of Pakenham (Respondent) v. Group of Employees (Objector)

Unit: "all employees of 1024436 Ontario Limited c.o.b. as Charms of Pakenham, in the County of Lanark, save and except Clinical Supervisor, Home Administrators and persons above the rank of Clinical Supervisor" (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	15

**1549-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. The Recreation Association of the Public Service of Canada (Respondent)

Unit: "all employees of The Recreation Association of the Public Service of Canada engaged in catering, beverage, cleaning, general housekeeping and maintenance operations regularly employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, security guards and persons engaged in the maintenance and landscaping of the Responding Party's property and facilities and in the maintenance and cleaning of indoor rink facilities" (28 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19



Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	14

**1580-95-R:** International Union United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 251 (Applicant) v. Waltec Components Division of Emco Limited (Respondent)

Unit: "all employees of Waltec Components, Division of Emco Limited at its Forging Plant, in Wallaceburg, Ontario, save and except shift supervisors persons above the rank of shift supervisor, and office, clerical and sales employees" (150 employees in unit)

Number of names of persons on revised voters' list	132
Number of persons who cast ballots	120
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	120
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	96

### **Applications for Certification Withdrawn**

**0829-95-R:** Labourers' International Union of North America, Local 247 (Applicant) v. Western Building Group Inc. (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 249 (Intervener)

**1266-95-R:** Labourers' International Union of North America Local 183 (Applicant) v. Great Alpine Window Cleaning Inc. (Respondent)

**1825-95-R:** International Union of Operating Engineers Local 796 (Applicant) v. The Toronto Hospital Western Division (Respondent)

**1890-95-R:** United Food and Commercial Workers International Union (Applicant) v. Kingsville Mushroom Farms Inc. (Respondent)

**1982-95-R:** The United Brotherhood of Carpenters and Joiners of America, Local Union 3054 (Applicant) v. Dean's Kitchen Centre Limited, c.o.b. The Top Shop (Respondent)

**1998-95-R:** Teamsters Local Union No. 879 (Applicant) v. Mainstream Transportation Ltd. (Respondent)

**2018-95-R:** Communications Energy and Paperworkers Union of Canada. (Applicant) v. Bell Mobility Paging. (Respondent)

**2064-95-R:** Graphic Communications International Union Local N-1 (Applicant) v. New Concept Complete Printing & Publishing Services Ltd. (Respondent)

**2125-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent)

**2130-95-R:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Kohl & Frisch Ltd. (Respondent)

**2143-95-R:** United Steelworkers of America (Applicant) v. Versatech Plastics Inc., c.o.b. as Versatech Industries (Respondent)

**2265-95-R:** Canadian Union of Public Employees (Applicant) v. Doug Roe Enterprises Ltd. c.o.b. Mid-Ontario Disposal (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)

**2281-95-R:** United Food and Commercial Workers International Union, AFL-CIO-CLC (Applicant) v. Santa Maria Foods Ltd. (Respondent)

## APPLICATION FOR COMBINATION OF BARGAINING UNITS

**0506-94-R:** Service Employees International Union, Local 204 (Applicant) v. Commemorative Services of Ontario (Respondent) (*Terminated*)

**3666-94-R:** The Corporation of the City of Trenton (Applicant) v. Canadian Union of Public Employees (Respondent) (*Granted*)

**0133-95-R:** Hotel Employees, Restaurant Employees Union Local 75 (Applicant) v. International Plaza Hotel and Conference Centre (Respondent) (*Granted*)

**0919-95-R:** Canadian Union of Public Employees and its Local 2936 (Applicant) v. Oshawa and District Association for Community Living (Respondent) (*Granted*)

**1004-95-R:** Canadian Union of Public Employees (Applicant) v. Services de Sante de Chapleau Health Services (Respondent) (*Granted*)

**1153-95-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Restauronics Services (Respondent) (*Withdrawn*)

**1380-95-R:** Ontario Nurses' Association (Applicant) v. Community Lifecare Inc. (Respondent) (*Withdrawn*)

**1392-95-R:** United Food and Commercial Workers International Local 175 (Applicant) v. Thrifty Canada Limited (Respondent) (*Granted*)

**1699-95-R:** Labourers International Union of North America, Local 837 (Applicant) v. Modern Building Cleaning Inc. (Respondent) (*Granted*)

**1700-95-R:** Labourers International Union of North America, Local 837 (Applicant) v. Hamilton-Wentworth Roman Catholic Separate School Board (Respondent) (*Granted*)

**1805-95-R:** Ontario Public Service Employees Union (Applicant) v. North Bay & District Health Unit (Respondent) (*Granted*)

**1826-95-R:** International Union of Operating Engineers Local 796 (Applicant) v. The Toronto Hospital Western Division (Respondent) (*Withdrawn*)

**1880-95-R:** Canadian Union of Public Employees Local 79 (Applicant) v. Municipality of Metropolitan Toronto (Respondent) (*Granted*)

**1986-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Canadian Pacific Hotels Corporation (Chateau Laurier Hotel) (Respondent) (*Granted*)

**2094-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent) (*Granted*)

**2118-95-R:** The Canadian Union of Public Employees (Applicant) v. Kerry's Place Autism Services (Scott's Place Group Home - Oshawa House) (Respondent) (*Granted*)

**2120-95-R:** Canadian Union of Public Employees (Applicant) v. The Essex County Roman Catholic Separate School Board (Respondent) (*Granted*)

**2149-95-R:** Ontario Nurses' Association (Applicant) v. North Algoma Health Organization (Respondent) (*Granted*)

**2152-95-R:** Ontario Public Service Employees Union (Applicant) v. Norfolk General Hospital (Respondent) (*Granted*)

**2375-95-R:** Windsor Regional Hospital (Applicant) v. The Canadian Power Engineers and Skilled Trades Union The Canadian Union of Operating Engineers and General Workers, Local 100, and Service Employees' Union, Local 210 (Respondents) (*Dismissed*)

## **FIRST AGREEMENT - DIRECTION**

**1442-95-FC:** Construction Workers Local 53, CLAC (Applicant) v. 109050 Ontario Ltd., c.o.b. Competitors General Contractors (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**1025-93-R:** Service Employees International Union, Local 532 (Applicant) v. The Canadian Red Cross Society, Hamilton-Wentworth Home Care Program-Victorian Order of Nurses, Visiting Homemakers Association, Care Plus, Comcare (Canada) Limited, Medical Personnel Pool (Hamilton) Ltd., Olsten Healthcare and Paramed Health Services (Respondents) (*Terminated*)

**1202-95-R:** International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. M & I Aluminum Ltd., Commercial Aluminum Limited and Commercial Aluminum (1993) Ltd. (Respondents) (*Granted*)

**1224-95-R:** International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. Insurance Glass Limited, Structoglas Ltd., and Insurance Glass Replacement Company Limited (Respondents) (*Endorsed Settlement*)

**1322-95-R:** International Brotherhood of Painters and Allied Trades, Local 1819, Glaziers (Applicant) v. Solarlite Installations Inc., Walltech Architectural Products Inc. and Consulac Architectural Products Ltd. (Respondents) (*Endorsed Settlement*)

**1714-95-R:** Ontario Nurses' Association (Applicant) v. Community Lifecare Inc. and Cledic Enterprises Ltd. and Lafontaine Lodge Ltd. (Respondents) (*Withdrawn*)

## **SALE OF A BUSINESS**

**1025-93-R:** Service Employees International Union, Local 532 (Applicant) v. The Canadian Red Cross Society, Hamilton-Wentworth Home Care Program-Victorian Order of Nurses, Visiting Homemakers Association, Care Plus, Comcare (Canada) Limited, Medical Personnel Pool (Hamilton) Ltd., Olsten Healthcare and Paramed Health Services (Respondents) (*Terminated*)

**1194-94-R:** United Food & Commercial Workers International Union, Locals 175 and 633 (Applicant) v. 1032002 Ontario Inc. carrying on business as Marilu's Market (Respondent) (*Withdrawn*)

**2119-94-R:** IWA Canada, Local 2693 (Applicant) v. Shin Ho Canada Ltd., Solid Wood Research Inc. (Respondents) (*Granted*)

**1202-95-R:** International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. M & I Aluminum Ltd., Commercial Aluminum Limited and Commercial Aluminum (1993) Ltd. (Respondents) (*Granted*)

**1224-95-R:** International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. Insurance Glass Limited, Structoglas Ltd., and Insurance Glass Replacement Company Limited (Respondents) (*Endorsed Settlement*) **1322-95-R:** International Brotherhood of Painters and Allied Trades, Local 1819, Glaziers (Applicant) v. Solarlite Installations Inc., Walltech Architectural Products Inc. and Consulac Architectural Products Ltd. (Respondents) (*Endorsed Settlement*)



## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**1834-95-R:** United Food and Commercial Workers International Union, Local 1977 (Applicant) v. Koch Transport (Respondent) (*Granted*)

## SECTION 64.2 - SUCCESSOR RIGHTS/CONTRACT SERVICES

**4432-94-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. City Centre Management Inc., BG Preeco 3 Ltd., Truscan Realty Limited and Radisson Hotel (London) (Respondents) (*Withdrawn*)

**2089-95-R:** Meadowvale Security Guard Services Inc. (Applicant) v. United Steelworkers of America and Christian Labour Association of Canada (Respondents) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**1925-94-R:** Studebaker's Employees (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent) v. 968684 Ontario Inc. c.o.b. as Studebakers (Intervener)

Unit: "all employees of 968684 Ontario Inc. employed at Studebakers in the Municipality of Metropolitan Toronto at 150 Pearl Street, save and except supervisors, persons above the rank of supervisor, office and accounting staff, D.J.s and students employed during the school vacation period" (17 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	6
Number of ballots segregated and not counted	1

**0014-95-R:** Joe White, Hank Brouwers, Paul Cyr (Applicant) v. Canadian Union of Shinglers & Allied Workers (Respondent) v. Residential Roofing Contractors Association of Metropolitan Toronto et al. (Intervener) (*Granted*)

**0103-95-R:** Warren Jenkins et al. (Applicant) v. Service Employees International Union Local (478) North Bay Ontario (Respondent) v. The Muskoka Board of Education (Intervener)

Unit: "all employees of the Muskoka Board of Education engaged in maintenance, service and plant operations, save and except supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, and those head caretakers specifically exempted by the Ontario Labour Relations Board" (112 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	88
Number of persons who cast ballots	80
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	80
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	79

**0379-95-R:** John Biro (Applicant) v. Labourers' International Union of North America, Local 183 (Respon-

dent) v. The Georgian Group Inc., The Georgian Construction Company Limited and Cresmark Construction Limited (Intervener) (*Withdrawn*)

**0475-95-R:** John Payne, Don Parent, Ron Arsenault and Allan Bruggink (Applicant) v. International Brotherhood of Electrical Workers Local 773 (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Feltek Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Feltek Inc. in all other sectors of the construction industry in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit) (*Dismissed*)

**0489-95-R:** Jean Pierre Rocque (Applicant) v. Local Union 71, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Respondents) v. 1010258 Ontario Inc., c.o.b. M & D Plumbing (1993) (Intervener)

Unit: "all plumbers, plumbers apprentices, steamfitters, steamfitters apprentices in the employ of 1010258 Ontario Inc., c.o.b. M & D Plumbing (1993) in the ICI sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit) (*Granted*)

**0877-95-R:** Colin McEwen (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. 955140 Ontario Inc. o.a. Pickard Construction (1991) (Intervener)

Unit: "all employees of the Employer for whom the union has bargaining rights within the Province of Ontario engaged in work covered by schedules and classifications set out in this agreement and any additional classifications as may be agreed to by the parties (Schedules A - O inclusive) all its employees, in all sectors of the construction industry in the County of Grey, excluding the industrial, commercial and institutional sector, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors, save and except non-working foremen and persons above the rank of non-working foreman" (1 employee in unit) (*Granted*)

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	1

**1892-95-R:** The Employees of Axiom Colquhoun Audio Laboratories Limited (Applicant) v. IWA-Canada Local 1-1000 (Respondent) (*Dismissed*)

**1938-95-R:** Garry Callahan (Applicant) v. United Steelworkers of America (Respondent) v. Beatrice Foods Inc. (Intervener) (*Withdrawn*)

**1997-95-R:** Pamela Wayne (Applicant) v. Ontario Public Service Employees Union Local 328 (Respondent) v. The Corporation of the Town of Midland (Intervener) (*Withdrawn*)

**2230-95-R:** S. MacDavid (Applicant) v. Hotel/Restaurant Employees Union Local 75 (Respondent) v. 968684 Ontario Inc. c.o.b. as Studebakers (Intervener) (*Granted*)

## REFERRAL FROM MINISTER (SECTION 109)

**1840-95-M:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Cara Operations Limited (Airline Services Division, Gloucester) (Respondent) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**1993-95-U:** PCL Prairie Construction Inc. (Applicant) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local 759 and Bob Stoppel and Larry Baille (Respondent) (*Endorsed Settlement*)

**2310-95-U:** Four Seasons Drywall Systems & Acoustics Ltd. (Applicant) v. International Brotherhood and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Respondent) v. Ontario Painting Contractors Association (Intervener) (*Granted*)

## APPLICATIONS CONCERNING REPLACEMENT WORKERS

**2191-95-U:** Bricklayers and Masons' Union, Local No. 1, Ontario of the International Union of Bricklayers and Allied Craftsmen and The Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Bestco Construction Corp. (Respondent) (*Withdrawn*)

**2223-95-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Old Oak Properties Inc. (Respondent) (*Endorsed Settlement*)

**2328-95-U; 2329-95-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Old Oak Properties Inc. (Respondent) (*Granted*)

**2393-95-U:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1119354 Ontario Inc. c.o.b. as Astro Construction (Respondent) (*Endorsed Settlement*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**1760-94-U:** Leonard A. Vaillant (Applicant) v. Communications, Energy & Paperworkers' Union, Local 39 (Respondent) v. Lakehead Newsprint Ltd. (Intervener) (*Dismissed*)

**2811-94-U:** Gaetane Parps (Applicant) v. Ontario Nurses Association Local 162 and Etobicoke General Hospital (Respondents) (*Dismissed*)

**3042-94-U:** Canadian Union of Public Employees Local 94 (Applicant) v. The Corporation of the City of North York (Respondent) (*Granted*)

**3051-94-U:** Lisa Anne Brown (Applicant) v. Canadian Auto Workers Union Local 27 (Respondent) v. 3M Canada Inc. (Intervener) (*Withdrawn*)

**3872-94-U:** The Employees of the Sisters of Charity of Ottawa Health Services (Applicant) v. The Independent Canadian Transit Union Local 9 and its Officers (Respondent) v. Sisters of Charity of Ottawa Health Services (Intervener) (*Withdrawn*)

**4153-94-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Brookside I.G.A. (Respondent) (*Withdrawn*)

**4217-94-U:** Canadian Union of Public Employees and its Local 883 (Applicant) v. The Salvation Army Grace General Hospital (Respondent) (*Withdrawn*)

**4252-94-U:** Louise V. Clarke (Applicant) v. Canadian Union of Public Employees (Respondent) v. Children's Aid Society for the District of Nipissing (Intervener) (*Dismissed*)

**4423-94-U:** Samir Haddad (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers & Allied



Employees, Local Union No. 647 (Respondent) v. Dempster's, A Division of Corporate Foods Ltd. (Intervener) (*Terminated*)

**4498-94-U:** Jean Gallant (Applicant) v. Canadian Union of Public Employees, Local 149 (Respondent) (*Withdrawn*)

**4551-94-U:** Nancy Haalboom (Applicant) v. The Canadian Union of Public Employees, Local 3042 (Respondent) v. The Children's Aid Society of Hamilton-Wentworth (Intervener) (*Withdrawn*)

**4564-94-U:** James J. Guglielmin (Applicant) v. Amalgamated Transit Union Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Withdrawn*)

**4587-94-U:** Doffy Hahn (Applicant) v. 487948 Ontario Limited and Propan Ltd., carrying on business as Badlands (Respondent) (*Granted*)

**4600-94-U:** Judy Dzambic (Applicant) v. Service Employee's International Union, L. 478 (Respondent) (*Withdrawn*)

**0220-95-U:** Computing Devices Canada Employees Association (Applicant) v. Computing Devices Canada Ltd. (Respondent) (*Withdrawn*)

**0703-95-U:** Edward Murphy (Applicant) v. United Steelworkers of America, Local 19228 (Respondent) (*Withdrawn*)

**0713-95-U:** Marsha Fouks, Robert Francella, Caspar Verre, Mark Longden, Darryl Hayastic, Leo Herskovits (Applicant) v. Ron Davidson, Co-ordinator Grievance Department OPSEU (Respondent) (*Withdrawn*)

**0876-95-U:** Ranjit Singh Brar (Applicant) v. Chrysler Canada Ltd., C.A.W. Local 1459 (Respondents) (*Withdrawn*)

**0942-95-U:** Canadian Union of Public Employees Local 3798 (Applicant) v. Ecuhome Corporation (Respondent) (*Withdrawn*)

**1086-95-U; 1738-95-U:** Mary Piper (Applicant) v. Canadian Hotel and Service Workers Union (Respondent) (*Withdrawn*)

**1196-95-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Novacor Construction Ltd. (Respondent) (*Withdrawn*)

**1211-95-U:** Mario Fenech (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Respondent) v. Central Stamping Limited (Intervener) (*Withdrawn*)

**1228-95-U:** Service Employees' Union, Local 210 (Applicant) v. University of Windsor (Respondent) (*Dismissed*)

**1337-95-U:** Ontario Public Service Employees Union (Applicant) v. Network North: The Community Mental Health Group (Respondent) v. Ontario Nurses' Association (Intervener) (*Endorsed Settlement*)

**1378-95-U:** Anna Lamb, on her own behalf and on behalf of a group of employees of Paul Noiseaux and René Lemire, in Trust (Applicant) v. Hospitality & Service Trades Union, Local 261 (Respondent) (*Withdrawn*)

**1443-95-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. W.R. Industries Limited (Respondent) (*Dismissed*)

**1463-95-U; 1723-95-U:** The Ontario Nurses' Association (Applicant) v. Royalcrest Life Care Group, c.o.b. as Townsview Life Care Centre, Hamilton (Respondent) (*Withdrawn*)

**1474-95-U:** Margaret Rajmoolie (Applicant) v. Amalgamated Transit Union Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Dismissed*)

**1535-95-U:** John Cheresna (Applicant) v. Sheet Metal Workers' International Association, Local 47 (Respondent) (*Withdrawn*)

**1612-95-U:** Cathy Dimitruk (Applicant) v. Canadian Union of Public Employees, Local 1316 (Respondent) (*Withdrawn*)

**1627-95-U; 1927-95-U:** United Steelworkers of America (Applicant) v. CAA Insurance Company (Ontario) (Respondent); CAA Insurance Company (Ontario) (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**1633-95-U:** Gary King (Applicant) v. Ontario Public School Teachers' Federation (Respondent) (*Withdrawn*)

**1636-95-U:** Paul Martins (Applicant) v. Central Stampings Limited, The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada), and its Local 195 (Respondents) (*Withdrawn*)

**1649-95-U:** Preamlal Karpat (Applicant) v. United Plant Guard Workers of America, Local 1962 (Respondent) (*Withdrawn*)

**1685-95-U:** Sharon Priggen (Applicant) v. Canadian Union of Public Employees (C.U.P.E.) Local No. 1734 (Respondent) (*Dismissed*)

**1693-95-U:** Gary Martin Carter (Applicant) v. International Association of Machinists and Aerospace Workers (IAMAW), Local Lodge 1542 (Respondent) v. Boeing Canada Technology Ltd. (Intervener) (*Withdrawn*)

**1720-95-U:** Syndicat Canadien de la Fonction Publique (Applicant) v. Hopital Montfort (Respondent) (*Withdrawn*)

**1731-95-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Sanitary Maintenance Systems (Respondent) (*Withdrawn*)

**1752-95-U:** I.W.A. Canada, Local 1-1000 (Applicant) v. Shaw Industries Ltd. c.o.b. as CANUSA (A Division of Shaw Industries Ltd.) (Respondent) (*Withdrawn*)

**1758-95-U:** Andy Pritchard (Applicant) v. The United Steelworker of America 3313 District 6 (Respondent) v. EMCO Window & Door Centre (Intervener) (*Withdrawn*)

**1779-95-U:** Service Employees International Union, Local 204 (Applicant) v. 794641 Ontario Limited c.o.b. Kelsey's (Respondent) (*Withdrawn*)

**1794-95-U:** Michelle A. Landry (Applicant) v. The CAW/TCA and Camco Inc. (Respondents) (*Withdrawn*)

**1808-95-U:** John Troia (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) (*Withdrawn*)

**1838-95-U:** Diomedes Perdomo Collado (Applicant) v. Federated Building Maintenance (Respondent) (*Dismissed*)

**1856-95-U:** Ontario Public Service Employees Union (Applicant) v. Wallaceburg & Sydenham District Association for Community Living (Respondent) (*Withdrawn*)

**1876-95-U:** Firoz Ramji (Applicant) v. Westbury Howard Johnson Plaza Hotel (Respondent) (*Dismissed*)

**1901-95-U:** Jonathan Lapia (Applicant) v. Metropolitan Toronto Civic Employees Union Local 43 (Respondent) (*Dismissed*)

**1904-95-U:** Charles Moonsammy (Applicant) v. Computing Devices Canada Employees Association (Respondent) (*Dismissed*)

**1912-95-U:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Ottawa Hunt and Golf Club Limited (Respondent) (*Dismissed*)

**1916-95-U:** Jeremy Haas (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Locals 257 & 173 (Respondent) (*Terminated*)

**1952-95-U:** United Food and Commercial Workers International Union, Locals 175 and 633 (Applicant) v. Art Parliament Foods., carrying on business as Foxboro I.G.A. (Respondent) (*Withdrawn*)

**1967-95-U:** Able Atlantic Taxi Ltd. (Applicant) v. Retail Wholesale Canada, division of the United Steelworkers of America Local 414 (Respondent) (*Withdrawn*)

**1979-95-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Great Alpine Window Cleaning Inc., also known as the Alpine Group Inc. (Respondent) (*Withdrawn*)

**2003-95-U:** Walter H. Sugden, member of I.A.T.S.E. Local 357 and an employee of the Stratford Festival Theatre (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 357, President Ron Seip (Respondent) (*Withdrawn*)

**2011-95-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Trafalgar Distribution Services (A Division of 820990 Ontario Inc.) (Respondent) (*Dismissed*)

**2025-95-U:** Union members of Local 889, Lance Willett et al (Applicant) v. The Union Executive Committee Local 889 (Respondent) (*Withdrawn*)

**2032-95-U:** Windsor Newspaper Guild, Local 239, the Newspaper Guild (Applicant) v. The Windsor Star, A Division of Southam Inc. (Respondent) (*Terminated*)

**2065-95-U; 2066-95-U; 2067-95-U:** David Martin, member of I.A.T.S.E. Local 357 and an employee of the Stratford Festival Theatre (Applicant) v. International Alliance of Theatrical Stage Employees And Moving Picture Machine Operators of the United States and Canada - Local 357, President Ron Seip (Respondent); Ehrhard Nowak, member of I.A.T.S.E. Local 357 and an employee of the Stratford Festival Theatre (Applicant) v. International Alliance of Theatrical Stage employees and Moving Picture Machine Operators of the United States and Canada - Local 357, President Ron Seip (Respondent) (*Withdrawn*)

**2096-95-U:** Bruce Robinson (Applicant) v. U.R.W. Local 889 (Respondent) (*Dismissed*)

**2112-95-U:** Teamsters Local Union No. 419 (Applicant) v. 1059288 Ontario Inc. o/a Young Drivers of Canada (Toronto) (Respondent) (*Withdrawn*)

**2121-95-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Auto-Pak Ltd. (Respondent) (*Withdrawn*)

**2131-95-U:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Kohl & Frisch Limited (Respondent) (*Withdrawn*)

**2132-95-U:** United Steelworkers of America (Applicant) v. Car-Wal Doors Systems Limited (Respondent) (*Endorsed Settlement*)

**2187-95-U:** John T. Longpre, Kelly Sullivan, Ed Condon (Adanac Security - Ottawa) (Applicants) v. Davis Communications and Security Agency - Dorothy Davis - Owner (Respondent) (*Dismissed*)



**2216-95-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Empire Maintenance Industries Inc. (Respondent) (*Withdrawn*)

**2232-95-U:** Stephanie Robinson (Applicant) v. Versa Foods (Respondent) (*Dismissed*)

**2237-95-U:** Service Employees International Union, Local 204 (Applicant) v. Sisters of St. Joseph for the Diocese of Toronto and Upper Canada (Respondent) (*Withdrawn*)

**2247-95-U:** John Longpre, Kelly Sullivan, Ed Condon, Gerald Cooper (Adanac Security) (Applicant) v. Commonwealth Plywood (Respondent) (*Dismissed*)

**2290-95-U:** James Nevelles, Steve Balogh (Applicants) v. Danny Manczur, Metropolitan Toronto Civic Employees Union Local 43 C.U.P.E. (Respondent) (*Dismissed*)

**2296-95-U:** Concetta Di Matteo (Applicant) v. Krystal Cap Co. Ltd. and Amalgamated Clothing and Textile Workers (ACTW) (Respondents) (*Dismissed*)

**2334-95-U:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 and Dindilall Chanderpaul (Applicant) v. 960-990 Ontario Inc. carrying on business as Cliffs Welding and Pressure Tapping (Respondent) (*Endorsed Settlement*)

## APPLICATION FOR INTERIM ORDER

**1271-95-M:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Bro-neff Contractors (Respondent) (*Withdrawn*)

**2079-95-M:** United Steelworkers of America (Applicant) v. Videolux Canada Inc. (Respondent) (*Granted*)

**2335-95-M:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 and Dindilall Chanderpaul (Applicant) v. 960-990 Ontario Inc. carrying on business as Cliffs Welding and Pressure Tapping (Respondent) (*Endorsed Settlement*)

**2405-95-M:** United Food and Commercial Workers International Union (Applicant) v. Larsen Transfer of Sudbury Limited (Respondent) (*Granted*)

## APPLICATIONS FOR RELIGIOUS EXEMPTION

**2248-95-M:** Marina V. Lepp (Applicant) v. Service Employees Union Local 210, Leamington Mennonite Home and Apartments (Respondents) (*Withdrawn*)

## JURISDICTIONAL DISPUTES

**3301-93-JD:** International Brotherhood of Electrical Workers, Local Union 1788 (Applicant) v. Abroyd Communications Limited, Electrical Power Systems Construction Association, International Association of Bridge, Structural and Ornamental Ironworkers and International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Respondents) (*Terminated*)

**0623-95-JD:** Ontario Sheet Metal Workers' & Roofers' Conference and Sheet Metal Workers' International Association Local 235 (Applicant) v. Nicholls-Radtke Ltd., International Association of Bridge, Structural and Ornamental Ironworkers', Local 700 (Respondents) (*Dismissed*)

**1325-95-JD:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Applicant) v. Copper Cliff Mechanical & Steel Fabricating Ltd., International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**3095-89-M:** Spar Professional and Allied Technical Employees' Association (Applicant) v. Spar Aerospace Ltd. (Respondent) (*Granted*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**1719-95-OH:** Dave Howe (Applicant) v. Recreation & Industrial Products Corporation (Respondent) (*Withdrawn*)

**1819-95-OH:** Ed Mader (Applicant) v. Joe Nehme (Respondent) v. Mansour Mining Supply Inc. (Intervener) (*Withdrawn*)

**2380-95-OH:** Ralph Grottola (Applicant) v. Pro-Teck Roofing & Siding (Respondent) (*Dismissed*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**0033-95-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46, (Applicant) v. Dynamic Power Excavating Ltd./Dynamic Plumbing and Fire Protection Co. Ltd., and Intercontinental Plumbing and Fire Protection Co. Ltd. (Respondents) (*Endorsed Settlement*)

**0115-95-G; 1527-95-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Cooler Guys Inc. (Respondent) (*Withdrawn*)

**0885-95-G:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. C A K Masonry 1988 Ltd. (Respondent) (*Endorsed Settlement*)

**0888-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Roberto Construction (Respondent) (*Withdrawn*)

**0892-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. 1097993 Ontario Inc. (King City Contracting) (Respondent) (*Withdrawn*)

**0914-95-G:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Copper Cliff Mechanical & Steel Fabricating Ltd. (Respondent) v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Intervener) (*Withdrawn*)

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*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario  
M7A 1V4*

ISSN 0383-4778



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November 1995



Ontario



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# ONTARIO LABOUR RELATIONS BOARD REPORTS

A Monthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1995] OLRB REP. NOVEMBER

EDITOR: RON LEBI

Selected decisions of particular reference value are  
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Typeset, Printed and Bound by Union Labour in Ontario







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**3383-93-U Canadian Union of Public Employees - Local 87 (Inside Unit), Applicant v. The Corporation of The City of Thunder Bay, Responding Party**

**Duty to Bargain in Good Faith - Unfair Labour Practice - Board finding that employer's removal of wage offer, in context of enormous upheaval caused by *Social Contract Act* and other expenditure reduction legislation in 1993, not amounting to bad faith bargaining - Application dismissed**

**BEFORE:** *Laura Trachuk*, Vice-Chair and Board Members *R. W. Pirrie* and *P. V. Grasso*.

**APPEARANCES:** *Bill Sumerlus*, *Judith M. Mongrain*, *Barry Chezick*, *Tim Mayne*, *Gabe Landry*, *Teresa Armiento* and *Howard Matthews* for the applicant; *Allen Craig* and *Alan Hjorth* for the responding party.

**DECISION OF THE BOARD;** November 9, 1995

1. This is an application under section 91 of the *Labour Relations Act*. The applicant (the "union") alleges that the responding party (the "City") has violated section 15 of the Act.

**The Facts**

2. In June, 1993 the City had collective bargaining relationships with twelve bargaining units, including three represented by the Canadian Union of Public Employees, (CUPE). One unit is generally referred to as the "inside" unit (the applicant), another as the "outside" unit, and the third as the "animal control" unit. In the fall of 1993 the parties agreed to combine the three CUPE units.

3. The applicant and the City were parties to a collective agreement which expired on December 31, 1991. The parties commenced collective agreement negotiations on October 30, 1991. Subsequent meetings were held on December 11 and 12, 1991, January 9, 1992 and February 18, 1992.

4. On January 27, 1992, City Council passed a resolution providing for compensation increases for its employees of 1% in 1992, 2% in 1993 and 2% in 1994. This resolution was in response to the Provincial government's decision to limit increases in transfer payments to municipalities to 1% in 1992 and 2% for the subsequent two years. City Council had not passed such a resolution in the past.

5. The parties met for collective agreement negotiations three times in March, 1992. During the negotiation meeting on March 18, 1992 the City advised the union of the Council's resolution and that its wage proposal would therefore be 1%, 2% and 2%. The union reminded the City of its obligation to bargain and the City returned with a proposal that if certain other changes could be made to the collective agreement, the financial savings to the City could be realized as increases to bargaining unit members. The union rejected this offer on the basis that it did not wish to buy its own wage increase.

6. The parties met with a conciliation officer on May 20, 1992. At that meeting the City again included an offer of 1% for 1992, 2% for 1993 and 2% for 1994 in its draft agreement, but also included a 1994 COLA clause. The union rejected this offer but indicated it would agree to a two-year agreement if the City would agree to the rest of its proposals. The parties did not reach

an agreement. Subsequently, the City withdrew the COLA offer as well as the offer of 2% for 1994.

7. The parties agreed to a hiatus in negotiations and did not meet again until February 25, 1993. At the February 25 meeting the union included a wage proposal of 1% in 1992 and 2% in 1993 in its draft agreement, but as there were other outstanding issues the parties did not reach a collective agreement. The union's business representative, Howard Matthews, testified that the union agreed to the wage proposal in return for a personal undertaking from Mr. Thom, the City Manager, that the bargaining unit members would not be laid off.

8. In April 1993 the province released the Expenditure Control Plan which dealt with reducing provincial spending in the public and broader public sectors. As part of the Plan, grants to municipalities were reduced by 2% of their budgets. The documents circulated to the municipalities by the Province at that time also described the government's intentions to negotiate social contracts and included some details on the expected content of those contracts, including requiring employees to take off one unpaid day of leave per month. On May 12, 1993 the Provincial government advised the City that its Expenditure Control Plan reduction would be \$2,159,161.00. The communication from the Province also updated the City on the government's commitment to negotiating a social contract to further reduce the deficit.

9. The outside unit was also involved in collective bargaining during this period. In April 1993, it negotiated a collective agreement which contained a 1% wage increase for 1992 and 2% for 1993.

10. On May 10 and 11, 1993 the parties met with a conciliation officer. Again both parties' draft agreements contained wage increases of 1% and 2% but there were other issues outstanding and no collective agreement was achieved.

11. On June 16, the draft *Social Contract Act* (the S.C.A.) was announced. It indicated that the *Social Contract Act* was to take effect on June 14.

12. On June 17, 1993 the parties met with a conciliation officer and were again unable to achieve a collective agreement. Mr. Matthews testified that the City advised the union that the 1% and 2% might be off the table as a result of the announcement of the *Social Contract Act* and that it could therefore not sign off on wages that day. The union proposed in response that the parties include the phrase "subject to any legislative prohibition" in the collective agreement. The union's written proposal from this meeting indicates that it would accept 1% and 2%. There continued to be other issues outstanding between the parties on this date and as a result, they did not achieve a collective agreement.

13. The parties had a further negotiation meeting scheduled in July but the City cancelled it stating that it was studying the S.C.A.

14. On July 27 the union was informed during social contract negotiations that the previous wage offer of 1% and 2% was no longer available. It was the union's position that the 1% and 2% should still be available and credited towards its contribution to the social contract target.

15. On August 3, 1993 City Council passed another resolution providing that funds budgeted for estimated wage increases for the years 1992 and 1993 were not to be used either for unsettled contract negotiations or to reduce target requirements under the *Social Contract Act*.

16. The City and the union did not arrive at a local agreement under the *Social Contract Act*

and therefore the City posted a Social Contract Program under Part VII (the “failsafe” provisions) of the Act. This program provided for involuntary unpaid days off for all employees making over \$30,000.00 per year. At the hearing the union articulated this in terms of a monetary figure which represented the bargaining unit’s “required contribution” to the social contract reductions. According to the union, its “contribution” was approximately equivalent to the amount the City saved by withdrawing the offer of 1% and 2%. Explained another way, the inside unit’s members’ wages were being reduced (through unpaid days off) from their pre June 14 salaries. If the 1% and 2% increase was included as part of their salaries, the cost of the social contract reductions would have been diminished for them. As the outside unit had concluded a collective agreement prior to June 14, its members’ wages were reduced from their increased salaries, resulting in a smaller net loss.

17. The union requested in writing that the City meet for collective agreement negotiations during the fall of 1993 but the City did not answer the letter and did not meet. The witnesses for the City claimed that they did not wish to meet because they had limited time and were already meeting with CUPE about so many other things including the fall-out of their agreement to combine the three CUPE bargaining units and social contract issues. They also said that they did not see any point in meeting if the union was insisting upon wage increases that were no longer available.

18. In November, 1993, Mr. Matthews contacted the City and indicated that the union would like to meet to discuss increases for the employees making under \$30,000.00 per year. This group is referred to in the social contract context as “LICOs” (low-income cut-offs). The City’s bargaining committee then went to City Council for a mandate to bargain increases for the LICOs and a resolution was passed allowing them to do so. The parties therefore met again for collective agreement negotiations on December 7, 1993. At that meeting the City submitted a “Proposal to Settle”, understood to be a final offer, of 1% and 2% for those employees making under \$30,000.00. The union was not completely satisfied with respect to who would be covered by this provision and rejected the offer. The union also wanted the 1% and 2% to apply to all of the employees in the bargaining unit although its implementation for those making more than \$30,000.00 would be delayed until March 1996. The parties failed to reach a collective agreement at that meeting.

19. The City and the animal control unit, all the members of which make less than \$30,000, reached a collective agreement on December 9, 1993 for 1992-1993 which included a 2% wage increase.

20. On February 21, 1994 the parties negotiated an agreement on all outstanding items except wages. The parties have also negotiated a collective agreement for the combined unit for 1993 to 1996.

21. The City Treasurer, Paul Milligan, and one of the members of the negotiation team, Alan Hjorth, testified for the City. The responding party, unlike many other municipalities in the province, has been in a very healthy financial position and has had a budget surplus since at least 1987. Mr. Milligan testified that when the 1993 budget was approved by Council on January 25, 1993 there was a budget surplus from 1992 which was even higher than usual although the budget still included a mill rate increase of 1.1%. When Council approved the 1993 budget it charged its administration to reduce its expenditures in 1993 and find a further surplus for future years. It appears that the 1993 City Council had a cautious approach to fiscal matters as does Mr. Milligan, who wished the City to set aside considerable sums to be available in case the City lost some outstanding law suits, to deal with potential future landfill problems, to fund municipal elections, or to



“stabilize” future mill rate increases. Council chose to eliminate future mill rate increases. However, as a result of the Expenditure Reduction Program and the *Social Contract Act*, by July, 1993, the City was facing a shortfall of its expected revenue of approximately four million dollars. Nevertheless, by the end of 1993, the City had still achieved a budget surplus of 4.4 million. At the end of 1994 it was in a budget surplus position of 3.7 million. It projects that it may no longer have a budget surplus by the end of 1996. Mr. Milligan testified that he personally attended the social contract meetings with the unions in July 1993 and explained the City’s fiscal situation as described above.

### **Submissions of the Parties**

22. The union argued that the City did not bargain in good faith for several reasons. It claimed that the City did not send people to the bargaining table who could make decisions with respect to wages because City Council was making those determinations by resolution. It also argued that the City withdrew a wage offer which had been accepted by the union and refused to discuss its reasons. It submitted further that the City refused to meet to bargain wages in the fall of 1993. It was apparent that the union’s real concern was that the City was relying on the S.C.A. to justify its refusal to negotiate retroactive wage increases which it could obviously afford. The union asked the Board to consider the following decisions: *DeVilbiss (Canada) Limited*, [1976] OLRB Rep. March 49; *Fotomat Canada Limited*, [1981] OLRB Rep. Feb. 145; *Austin Airways Limited* [1980] 3 Can. LRBR 393; *Canadian Industries Limited*, [1976] OLRB Rep. May 199; *Sparton of Canada Limited*, [1985] OLRB Rep. Sept. 1420; *Wilson Automotive (Belleville) Ltd.*, [1980] OLRB Rep. July 1136.

23. The City denied that it had bargained in bad faith. It denied that the parties had signed off on a wage increase of 1% and 2% and asserted that it was entitled to remove its wage offer when circumstances changed as a result of the Expenditure Reduction Program and the *Social Contract Act*. It also argued that its decision and the reasons for it were discussed in the social contract meetings and that it was fully justified in its position that the offered wage rate should not count towards the union’s social contract “target”.

24. The City defended its failure to meet for collective agreement negotiations in the fall of 1993 on the basis that it had to deal with the social contract for ten bargaining units and that it was dealing with the ramifications of the newly combined unit. It also argued that it did not wish to meet as the parties had become polarized and there was no point in meeting until the union indicated in November that it wanted to meet about the LICOs. The City denied that it withdrew its offer of 1% and 2% and never replaced it for the non-LICO employees because it thought it was required or authorized by the *Social Contract Act* to do so. It claimed that it acted as it did because of the economic implications of the *Social Contract Act* and the Expenditure Reduction Plan which significantly reduced its expected revenues. The Board was referred to the following decisions: *Aristokraft Vinyl Inc.*, [1985] OLRB Rep. June 799; *The Toronto Jewellery Manufacturers’ Association*, [1979] OLRB Rep. July 719; *Pine Ridge District Health Unit*, [1977] OLRB Rep. Feb. 65; *Indalloy, Division of Indal Limited*, [1979] OLRB Rep. Jan. 35; *Nordair Ltd.*, 85 CLLC 14,160; *Board of Education for the City of Hamilton*, [1993] OLRB Rep. April 308; *Municipality of Casimir, Jennings and Appleby*, [1978] OLRB Rep. June 507; *General Wood Products*, [1993] OLRB Rep. July 597.

### **Decision**

25. Section 15 of the *Labour Relations Act* provides as follows:

15. The parties shall meet within fifteen days from the giving of the notice or within such further

period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

26. Section 24(9) of the *Social Contract Act*, S.O. 1993, Chap. 5 proposes as follows:

24.-(9) If a collective agreement has expired before June 14, 1993 and on that date the employees that were formerly bound by it are without a collective agreement, the compensation of these employees is fixed at the amount they were receiving under the last collective agreement in force before June 14, 1993.

27. After carefully considering the matter, the Board does not find that the City has violated the Act. In previous decisions, the Board has found that an employer violates its duty under section 15 if its actions constitute a refusal to recognize the trade union as the representative of the employees, or if its actions are designed to avoid reaching a collective agreement. (See *Devilbiss Canada Limited, supra*, and *Fotomat Canada Limited, supra*). In these circumstances, however, the employer manifestly recognized the union as the bargaining agent of the employees as it reached agreements with two other CUPE bargaining units during the same period of negotiations. It indicated its willingness to sign collective agreements repeatedly during negotiations with this bargaining unit and it agreed to combine the three CUPE units in the middle of the bargaining process. The evidence further disclosed that the employer was prepared to enter into a collective agreement as the parties did ultimately reach agreement on all issues except wages. The real dispute between the parties is whether it was unlawful for the City to remove its wage offer and refuse to reinstate it for non-LICO employees. However, the facts of this case must be seen in the context of the enormous upheaval caused by the *Social Contract Act* and other expenditure reduction legislation in 1993. In that context, the employer's actions do not amount to a violation.

28. Collective bargaining with an elected employer is always complicated by the blurring of roles between the organization as an elected body with political obligations and the organization's role as employer. Elected bodies sometimes (frequently, in recent years) make political decisions which relate directly to their relationships with their employees. This is the reality of collective bargaining in the public sector. In this case the City passed a resolution stipulating wage increases then proposed that wage increase in bargaining. Any employer may make a decision with respect to how big a wage increase it is prepared to give prior to bargaining just as many unions decide prior to bargaining that they will strike over certain issues, including wage increases. The City's negotiating team could have proposed a lower increase than it was prepared to give, thus allowing itself room to "bargain". However, such an approach would have been ridiculous in light of Council's resolution and the small size of the proposed wage increase.

29. The important question is whether a party's representatives at the table have the authority to make a deal. If the bargaining representatives do not have that authority, the Board has found that the responding party is failing to recognize the union and avoiding a collective agreement. However, the authority to make a deal is often, as here, subject to ratification and the bargaining agents can only undertake to recommend it. Mr. Hjorth was at the negotiating table in 1993 although he was not the head negotiator at the time. He testified that the City's team did have the authority to make a deal with the union but that they would always have to take it back to Council, just as the union would have to take it back to the membership. In such circumstances, it made sense for the City's negotiating team to try to comply with the wage increases Council wanted to see. He testified however that the team might have varied its wage offer if a significant event had occurred such as a strike vote. However, no one ever sought a no Board report. In any case, the City's bargaining team did vary its offer on three occasions, both with and without Council approval. In June 1992 it offered a COLA clause for 1994, in July, 1993 it withdrew the wage offer completely and then in December, 1993 it offered a wage increase for the LICOs.



30. The Board also does not find that the City violated the Act by withdrawing its wage offer in June 1993 and refusing to reinstate it for non-LICO employees. The union argued that 1% and 2% was an agreed upon item and therefore the City violated the Act by reneging on it. It does not appear that the wage increase was an agreed upon item because the parties were exchanging complete draft collective agreement proposals. The implication of such an approach is that the collective agreement is a package and the items it contains are only agreed if the whole package is accepted.

31. Even if the wage increase was an agreed upon item, and the Board acknowledges that there was some evidence that there was a *quid pro quo* in the form of a personal undertaking from the City Manager, the City was entitled to withdraw that proposal because circumstances had changed. It is not for this Board to decide whether or not it is contrary to the *Social Contract Act* to negotiate wage increases even if they are not payable. But it is not a violation of the *Labour Relations Act* for the City to decide not to do so. The City decided not to diminish its social contract savings by agreeing to a retroactive wage increase as the union claimed that it should. The *Social Contract Act* clearly contemplates that salaries of workers in the public and broader public sectors will be frozen at the levels they were at on June 14, 1993, the effective date of the Act. The union is hoping, we understand, to take an order from this Board directing that the proposed wage increase be included in the collective agreement to the office of the Social Contract Adjudicator to have its members' contribution re-evaluated. Such an order from this Board would appear, however, to be inconsistent with the *Social Contract Act* as we would, in effect, be ordering a retroactive wage increase. We would be putting the parties in the position they would have been in if they had signed a collective agreement before June 14. This situation is different from the one which this Board faced in 1976 in *Canadian Industries, supra*. The legislation in issue at that time provided that parties to a collective agreement could jointly apply for an exemption to the legislated wage increase restrictions and therefore left wages as an issue for bargaining. In that case, the Board found that the responding party was relying on the legislation to refuse to bargain wages; it was not faced, as here, with the knowledge that its expected revenues would be significantly reduced. In light of the City's extraordinary fiscal health in 1992 and 1993 in spite of the revenue reduction, its decision not to agree to this retroactive wage increase may have been perceived by the employees as unfair. However, it was not a violation of the Act.

32. The Treasurer testified that he did explain the City's fiscal concerns to the union during social contract negotiation meetings. The union argued, however, that the City had to deal with it with respect to this matter in collective bargaining negotiations, not social contract meetings. The Board disagrees. Social contract negotiations perforce must be about wages and, in a unionized context, the parties must discuss the effect of such negotiations on collective agreements. It would therefore be both onerous and confusing for the parties to have the same discussions in different meetings with different titles. What is important is that the parties did discuss the matter and the City explained its position. It is not surprising that the union was dissatisfied that the City wished to maintain a budget surplus to fund potential legal liabilities or to eliminate mill rate increases rather than reduce its members' social contract contribution, but the City is entitled to maintain those priorities if it has the bargaining power to do so.

33. The union also appeared to be alleging that the City violated the Act by refusing to negotiate wage increases which would take effect in 1996. Even if the *Social Contract Act* allows parties to negotiate increases which would take effect when the Act comes to an end in 1996, it is not a violation of the *Labour Relations Act* to refuse to do so. The City's obligation is to bargain for a collective agreement which would end when the new combined unit collective agreement begins. Refusing to negotiate terms for some later period cannot be described as an attempt to avoid a collective agreement.



34. The Board is troubled by the City's failure to meet to negotiate the collective agreement from September to November 1993 or to even respond to the union's letter and, in other circumstances such actions might be a breach of the Act. However, the City did agree to meet in December and tabled a wage proposal for the LICO employees. Furthermore, the parties have subsequently agreed upon everything except wage increases for non-LICO employees. In these circumstances, there would be a minimal labour relations purpose served in declaring a violation of the Act relating to the failure to meet during that brief period.

35. For all of the above reasons, the Board hereby dismisses this application.

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**0243-94-JD The Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 598, Applicant v. Labourers' International Union of North America, Local 1059 and Dafoe Floor Concrete Construction Ltd., Responding Parties**

**Construction Industry - Jurisdictional Dispute - Operative Plasterers and Cement Masons' union and Labourers' union disputing assignment of work related to installation of wire mesh in connection with placing and finishing concrete floors - Board finding work to be cement masons' work - Board not persuaded to disturb assignment to Cement Masons' union**

**BEFORE:** *Inge M. Stamp*, Vice-Chair, and Board Members *M. M. Vukobrat* and *J. Redshaw*.

**APPEARANCES:** *Marisa Pollock* and *Livio Balanzin* for the applicant; *John Moszynski* and *Manuel Reis* for Labourers International Union of North America, Local 1059; *Leigh England* for Dafoe Floor Concrete Construction.

**DECISION OF THE BOARD;** November 28, 1995

1. A consultation was held in this jurisdictional dispute pursuant to section 93 of the *Labour Relations Act*.

2. The applicant describes the disputed work as:

"all work pertaining to the cutting, tying and installation of wire mesh in connection with the placing and finishing of concrete floors at the Zeller's job in Masonville, Ontario."

3. The responding party Labourers' International Union of North America, Local 1059 ("Labourers" or "Local 1059") describes the work in dispute as:

"all work pertaining to the cutting, bending and installation of wire mesh required for the placing and finishing of concrete floors at the Zeller's job site in Masonville, Ontario."

4. The work was performed by members of the applicant employed by Dafoe Floor Concrete Construction Ltd. ("Dafoe"). Dafoe is bound to ICI agreements with the Labourers and the Operative Plasterers. Both unions assert their agreements claim this work.

5. Dafoe did the placing and finishing of concrete floors at the Zeller's store in Masonville,

Ontario. The work was subcontracted to Dafoe by the general contractor Eton Construction Ltd. Eton is bound only to the Labourers' ICI agreement.

6. It is the Labourers understanding that the total number of man hours involved are approximately "16 man hours for two workers". The disputed work was performed prior to the placing of the concrete and finishing of the floors.

7. The Operative Plasterers and Cement Masons ICI agreement claims in *Article 6 - Jurisdiction* the following:

6.01 Cement Masons

... "all preparatory work on concrete construction to be finished or rubbed, such as cutting of nails, wires, wall ties, etc.", ...

8. The Labourers' ICI agreement claims in *Schedule "E"*:

"Installation of wire mesh," ...

9. The Cement Finishers Appendix in the Labourers' ICI agreement in *Article 16 - Jurisdiction* claims:

... "all preparatory work on concrete construction to be finished or rubbed, such as construction of bulkheads, cutting of nails, wires, wall ties, etc.", ...

10. Counsel for the applicant submits this is not a dispute between "labourers" and "cement masons" but a dispute between cement masons/finishers represented by the Labourers' Union and cement masons/finishers represented by the Operative Plasterers and Cement Masons Union. The language in the Cement Finishers Appendix of the Labourers' ICI agreement is virtually identical to that of the Operative Plasterers and Cement Masons ICI agreement. The employers EBA includes the same group of contractors in the Labourers' ICI agreement as in the Operative Plasterers and Cement Masons ICI agreement. A contractor bound to both these ICI agreements obviously is at risk of having whichever union does not get the work file a grievance.

11. The applicant asserts where Labourers' and Operative Plasterers and Cement Masons bargaining rights co-exist in the workplace bargaining rights for Labourers cannot include bargaining rights for cement masons represented by the Labourers'. In 1990, counsel submits, there was an unsuccessful raid at Dafoe and if the Labourers' had been successful there would not be an issue today.

12. The applicant asks the Board not to overturn the assignment in this case. There was a representational contest in 1990. The Board should consider the relevant area practice of employers bound to both collective agreements. Further counsel submits Dafoe is bound only to the master portion of the Labourers' ICI agreement.

13. There is a Specialty Trade - Floor Finishing Appendix in the Operative Plasterers and Cement Masons ICI agreement. This Appendix "L" in Article 2 - jurisdiction states:

2.01 Cement Masons

... "All preparatory work on concrete construction to be finished or rubbed, such as cutting or nails, wires, wall ties etc.", ...

further down the Article continues:

... "The on site installation into the concrete mixes of fibres used to reinforce concrete."

14. The Cement Masons Union asserts that "fibres used to reinforce concrete" is a new procedure and serves the same function as wire mesh."

15. There are three contractors doing this type of work in Board Area No. 3, only two are bound to both the Labourers' and the Operative Plasterers and Cement Masons ICI collective agreements. The jurisdictional clauses in the cement finishing and waterproofing appendices of both ICI agreements are virtually identical. The third contractor employs cement masons represented by the Labourers union. There appears to be a difference between General Contractors performing this work and Specialty Floor Contractors performing this work.

16. Counsel for the Labourers submits the area practice overwhelmingly favours the Labourers. The Labourers' take the position while Article 16 of the Labourers' Cement Finishers Appendix does not specifically claim wire mesh it is claimed under Schedule "E" of the Labourers' master ICI agreement. It is the Labourers' position the work in dispute namely wire mesh is not included in the Cement Finishers Appendix. Counsel further submits wire mesh could be performed by members of either crew (labourers or cement/finishers represented by Labourers'). In counsel's view this is not a representational issue and the work in dispute (wire mesh) is not preparatory work for finishing concrete.

17. Counsel for the Labourers' submits the Board should not give any weight to the employer practice developed without the Labourers' knowledge. Placing of wire mesh is not integral to cement finishing. It is Labourers' work and does not require the skills of cement finishers. It is more economical and efficient to have labourers on site to do the placing of mesh and the placing of concrete. Placing of concrete is labourers work and not claimed by the cement masons. Placing the wire mesh is more integral to the placing of concrete than the finishing.

18. The company submits that its common practice is to use members of Local 598, Cement Masons any time the mesh is part of its contract. The company asserts it has been doing it this way for twenty years and intends to continue unless told otherwise.

19. The dispute appears to be between the same trade or craft represented by two different construction unions. This jurisdictional dispute appears to be a dispute as to whether cement finishers working under the Cement Finishers' Appendix of the Labourers' ICI agreement should perform the work or cement finishers working under the Operative Plasterers and Cement Masons ICI agreement.

20. Having reviewed all of the materials filed, including the declarations and the submissions of the parties, we find this work is cement masons work. Since Dafoe is bound to both the Labourers' and the Operative Plasterers and Cement Masons ICI agreements we are not persuaded in these circumstances to interfere with Dafoe's assignment.

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**3941-94-M Ontario Public Service Employees' Union, Applicant v. The Dufferin County Board of Education, Responding Party**

**Employee - Employee Reference - Board not accepting that Records Management Co-ordinator working at board of education employed in confidential capacity in matters relating to labour relations - Board determining Records Management Co-ordinator to be "employee" within meaning of the Act**

**BEFORE:** *Kevin Whitaker*, Vice-Chair, and Board Members *S. C. Laing* and *B. L. Armstrong*.

**DECISION OF KEVIN WHITAKER, VICE-CHAIR, AND BOARD MEMBER B. L. ARMSTRONG;** November 29, 1995

1. This is an application, under section 114(2) (formerly 108(2)) of the *Labour Relations Act* (the "Act"), for a determination by the Board of whether Betty Curylo, Records Management Co-ordinator, is an "employee" within the meaning of the Act.
2. By decision of March 14, 1995, the Board directed a Labour Relations Officer to inquire into and report to the Board with respect to the duties and responsibilities of Betty Curylo. Pursuant to this direction, Betty Curylo was examined by the appointed Labour Relations Officer and the parties. The parties were offered the opportunity to call further evidence and to make submissions on the evidence of Betty Curylo. The Board has now had the opportunity to review the transcript of the examination of Betty Curylo as well as the written representations which have been filed by the parties. For the following reasons, the Board finds that Betty Curylo is an employee within the meaning of the Act.
3. Ms. Curylo at the time of the application occupied two positions, each on a half time basis. One position, Program Services Secretary is on agreement of the parties within the applicant's bargaining unit and for which she is an employee for purposes of the Act. The other position of Records Management Co-ordinator is the position for which Ms. Curylo is the subject of this application. Although Ms. Curylo is at all times simultaneously responsible for the duties of both positions, as a practical matter she works one day on and one day off in the two respective positions.
4. In the position of Records Management Co-ordinator, Ms. Curylo is responsible in a general sense for all records generated by the respondent. This includes the responsibilities of Network Administrator, the term "Network", referring to a local area computer network used by the respondent. Once a file has been created, whether that is paper or electronic, Ms. Curylo from that point forward has access to anything that might be contained within the file.
5. It is apparent that this broad right of access extends to files that relate to matters of collective bargaining with the applicant union. The difference between the parties however is that the applicant takes the position that access to confidential labour relations information is not a regular, material or integral part of the job. The respondent's position is that the involvement is sufficient to render the position an exception for purposes of section 1(3) of the Act.
6. According to Ms. Curylo, she only has access to information which has been categorized as a file and following that surrendered to her for incorporation into the institutional file management system. This means for example that some documents relating to confidential labour relations matters that have yet to be formally consolidated into a file would not be within her sphere of access.

7. When and if documents enter the filing system, Ms. Curylo's job is not to read and act on the substantive content of the document. Rather, her job is to accurately classify, label and store the information according to the categories of existing file management. If for example a file were to contain the respondent's proposals for collective bargaining and notes on what might be acceptable to the respondent in a "bottom line" fashion, Ms. Curylo would not be responsible for knowing the content of the document. Rather she would have to know what it represents for purposes of classifying it and organizing it.

8. It should also be noted that documents that would be considered to be confidential in a labour relations sense comprise a very small percentage of the universe of documents that must be managed by Ms. Curylo within the file management system. A review of the document entitled "The Dufferin County Board of Education Directory of General and Personal Information Banks" marked as an exhibit to the examination of Ms. Curylo reveals literally hundreds of categories of documentation, of which only a small fraction are comprised of confidential labour relations matters. The job description for the position which was identified by Ms. Curylo as accurate does not describe any responsibilities relating to confidential labour relations matters. There is an obligation of confidentiality generally but nothing specific to labour relations.

9. Section 1(3) of the Act states as follows:

1.- (3) For the purposes of this Act, no person shall be deemed to be an employee who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

10. For purposes of this section, a person may be excluded from the category of "employee" under the Act if they exercise managerial functions or are employed in matters relating to labour relations. The terms are disjunctive and need not overlap. In this case the respondent argues that Ms. Curylo should be excluded on both grounds, however it is apparent and not seriously pursued by the respondent that she does not exercise any management functions. She does not hire, promote, direct or fire other employees. She has no real control either direct or indirect over the economic livelihoods of other employees and exercises none of the powers normally thought to reflect management authority. For this reason, the only aspect of section 1(3) which is significantly in dispute is the portion dealing with the phrase "employed in a confidential capacity in matters relating to labour relations".

11. There is little doubt that Ms. Curylo is employed in a confidential capacity. We do not believe however that she is so employed in matters relating to labour relations. Although Ms. Curylo could if she wished read in detail the documents which have been entrusted to her care, she does not have to absorb the contents of those documents in order to do her job other than to identify for purposes of classifying and eventually, culling. Further, those documents which would contain confidential labour relations matters would be few and far between when viewed as part of all the documentation generated by the employer and entered into the file management system.

12. The importance of having a regular and material involvement in confidential matters of labour relations was stressed by the Board in *York University*, [1975] OLRB Rep. Dec. 945 at page 951:

"... the Board must be satisfied of 'a regular, material involvement in matters relating to labour relations' to justify a finding excluding a person from operation of the Act. (See, *The Falconbridge Nickel Mines Ltd.* case, [1969] OLRB Rep. September 379). Mere access to confidential information that may pertain to labour relations, standing alone, is no reason for excluding employees from the bargaining unit. (*The Metropolitan Separate School Board* case [1974] OLRB Rep. Apr. 220). Nor is mere knowledge of matters that may be deemed 'confidential' in

the sense that the employer would not approve of disclosure of such information by his employees sufficient to justify a positive finding under section 1(3)(b). (See *The Comtech Group Limited* case [1974] OLRB Rep. May 291). The important test is whether there is a consistent exposure to confidential information on matters relating to labour relations so as to constitute such exposure an integral part of the employee's service to the employer's enterprise. (See, *The Toledo Scale Division of Reliance Electric Limited* case [1974] OLRB Rep. June 406)."

13. In *Metropolitan Separate School Board*, [1974] OLRB Rep. Apr. 220, the Board dealt with a similar situation where the employee had access to confidential labour relations documents but was not required to read and understand the contents of the documents. In that case, the Board noted that access to these types of documents in itself is not sufficient to justify excluding the position from collective bargaining. The Board emphasized that there had to be "regular material involvement" with the matters relating to labour relations.

14. The respondent in this case relied on the Board's decision in *The Corporation of the Town of Innisfil* [1994] OLRB Rep. Jan. 76. In that case, the Board found a Records Management Co-ordinator to not be an employee for purposes of the Act. There, the incumbent of the position also performed clerical work that was confidential in nature and related to labour relations over and above simply having access to all of the employer's records. In our view, those facts are different from those in the instant case.

15. Accordingly, we hereby determine that Betty Curylo is an employee for purposes of the Act.

#### **DECISION OF BOARD MEMBER S. C. LAING; November 29, 1995**

1. I dissent from the majority decision.

2. The Board's findings with respect to a position of Records Management Co-ordinator in *The Corporation of the Town of Innisfil*, [1994] OLRB Rep. Jan. 76 decision are, in my view, dispositive of this application.

3. In that case, the Board, in determining whether the Records Management Co-ordinator was an employee within the meaning of the Act stated in paragraph 26:

By contrast, Ms. Sjerps has access to, and is responsible for all the files of the Town, wherever situate, including files coded as HOO7, labour relations. We concluded that Linda Sjerps, Records Management Coordinator, is not an employee for purposes of the Act in that she regularly deals with and is responsible for the Town's record management system, including information that is confidential in respect of labour relations. ...

The facts of that case are similar to the instant case.

4. Accordingly, in these circumstances, I would find Ms. Curylo not to be an employee within the meaning of the Act as her work as Records Management Co-ordinator routinely involves the responsibility for the Board of Education's records management system including confidential information related to labour relations matters.



**1710-95-U United Steelworkers of America, Applicant v. Greenberg Stores Limited, Responding Party**

**Remedies - Unfair Labour Practice - Union alleging that employer improperly denied leave of absence request made by key inside organizer responsible for union certification - Key organizer resigning - Key organizers's open and highly visible union activity coupled with lack of any direct evidence to explain company's decision leading Board to find that employer's conduct tainted by anti-union animus - Application allowed - Reinstatement ordered and Board remaining seized with respect to compensation**

**BEFORE:** *Bram Herlich*, Vice-Chair, and Board Members *R. W. Pirrie* and *P. R. Seville*.

**APPEARANCES:** *Robert McKay* and *Cyndee Madore* for the applicant; *D. K. Robinson*, *Patrick McNeil*, *André Thibault*, *Edward B. Johnston*, *Betty Scardina* and *N. Paul Cloutier* for the responding party.

**DECISION OF THE BOARD; November 8, 1995**

1. The name of the responding party is hereby amended to read: "Greenberg Stores Limited".
2. This is an application filed pursuant to section 91 of the *Labour Relations Act* (the "Act") in which the applicant (also referred to as the "union") alleges that the responding party (also referred to as the "employer" or the "company") has violated sections 3, 65, 67, 71, and 81.2 of the Act.
3. Before outlining the facts in the limited detail necessary for the purposes of this decision, we observe that in coming to those findings of fact the Board has carefully considered all of the evidence before it and taken into account such factors as: the demeanour of the witnesses when giving their evidence, the clarity and consistency of that evidence when tested in cross-examination, the witnesses' ability to recall events and resist the tug of self-interest in shaping their answers, and what seems most probable in all the circumstances. In all candour there were difficulties with the evidence of virtually all of the persons called to testify on behalf of both parties. For example, Mr. McNeil, the employer's store manager was clearly extremely nervous at the prospect of testifying before the Board. Without even suggesting that apprehension in any way reflects on his credibility, the fact of the matter is that his evidence was never proffered with great confidence as to its reliability. Mr. McNeil was confused at the outset about dates and the precise sequence of events or contents of various conversations. On the other hand, neither was the evidence of Cyndee Madore (also referred to as the "grievor") entirely free from difficulty. She too had considerable (though somewhat less) difficulty recalling the specific time or sequences of events. She also testified about discussions she had with numerous management representatives in which the subject of the union arose. We find it unlikely that those management officials would have used precisely the same words or groups of words in those separate and independent discussions as Ms. Madore testified. There were other sometimes equally significant difficulties which arose in the evidence of other employer witnesses, difficulties which, in view of our ultimate findings, are unnecessary to catalogue or consider.
4. The net result of many of the shortcomings associated with the evidence as a whole is that it is extremely difficult for us to arrive at a picture which includes all the fine detail pertaining to all of the events giving rise to and culminating in these proceedings. However, as our decision will make clear, it has not been necessary to reconcile all of the evidence to produce an intricate

and minutely precise accounting of all of the significant events or their precise sequence. While there may be gaps in the fine detail, the basic events are essentially straightforward and undisputed.

5. The union seeks the reinstatement of Cyndee Madore to her former position with the company. Ms. Madore was the key inside organizer responsible for the certification of the union in December of last year. And whether or not the company was aware of the extent of her trade union activities at the time of certification, by the time it denied her leave of absence request, the company would have been well aware, at a minimum, of Ms. Madore's important role on the union's bargaining committee.

6. As a result of family difficulties and on the advice of a professional counsellor Ms. Madore determined that she would like to spend all or a significant portion of the school summer vacation period at home and, in particular, to be available for her 9 year old daughter. Consequently, by letter dated May 10, 1995 and addressed to Jim Keltie, the company's district manager, she requested a leave of absence from June 23 to September 11, 1995, a period of some eleven weeks. Ms. Madore's evidence makes it clear that, in her written request, she had set out the maximum leave period she required and that, in her mind at least, there was considerable flexibility as to what the actual duration of the leave might be (or, for example, whether it might be combined with her regular vacation entitlement). She never, however, had the opportunity to discuss this or any other issue related to the leave request with any employer representative who was in a position to make decisions or effective recommendations with respect to her request.

7. Ms. Madore's written leave request was forwarded by Mr. McNeil to Mr. Keltie. Approximately one month later Mr. McNeil was advised, in writing, by Mr. Keltie that the leave request had been denied. That written decision was not provided to Ms. Madore or, indeed, to this Board. Mr. McNeil testified that it contained no reason or explanation for the leave having been denied. Upon being advised of the denial, Ms. Madore made it clear that she intended to further pursue the matter.

8. Her leave apparently having been denied, Ms. Madore decided that the only way she could spend the time she felt was necessary with her daughter was to resign her employment. She prepared a letter of resignation. It was dated June 9, 1995 and purported to be effective June 22, 1995. At the time Ms. Madore's leave request was denied she was away from work on sick leave resulting from an injury at home. Her return date was uncertain. A number of people observed, both at the time and at the hearing, that her resignation may have been precipitous in that the duration of her sick leave (perhaps, if necessary, coupled with her vacation) might have obviated the need for any leave of absence. It was clear to Ms. Madore, however, that she would likely be able to return to work before the end of the summer and that a leave of absence was the only way to spend the summer with her daughter *and* retain her job. Since spending the summer with her daughter was her immediate priority and since the leave appeared doubtful, Ms. Madore saw no reason to put off what she saw as the inevitable; she also saw no reason to inconvenience the company by waiting and tendering a last minute resignation.

9. The exact timing of some aspects of these events is somewhat unclear. For example, although the evidence may even conflict on the point, we are satisfied, particularly in view of employer counsel's submissions, that Mr. McNeil told Ms. Madore that he would not immediately file her resignation but would hold it for a period of time until matters clarified. Alternatively, in view of the fact that the resignation is stated to be effective two weeks hence, we are satisfied that Ms. Madore was reasonable in assuming that the issue of her leave request was not entirely closed.

10. Ms. Madore then went on to make further inquiries of employer representatives located



at fairly significant spots in the corporate hierarchy. These included André Thibault and Edward Johnston, who are, respectively, the employee relations manager and president of MMG Management Group, a division of the employer which provides management support functions for the company's retail stores across the country. It is not necessary to review these exchanges in detail except to indicate that neither gentleman took any steps to reconsider the leave request. Indeed, Mr. Johnston explicitly advised Ms. Madore that as she had resigned the matter was closed. Here again, some of the precise details are elusive. It is clear, however, that Mr. McNeil chose to process Ms. Madore's resignation sooner than he had promised or, in any event, sooner than Ms. Madore expected. However one resolves the unclear evidence on the point, it is obvious that Ms. Madore began her supplementary inquiries before her resignation, on its own terms, became effective. Mr. McNeil initiated the submission of a company form attesting to Ms. Madore's resignation. Although this was a written document filed through the company's internal bureaucracy (and a copy kept by Mr. McNeil), it was not produced at the hearing.

11. One of the few points which emerged with crystal clarity from the evidence of all of the company witnesses was that the authority to make the decision regarding Ms. Madore's leave request was vested in and, in all likelihood, exercised by Mr. Keltie who did not testify before the Board. All of the company witnesses who did testify denied having made or participating in the making of the decision regarding the leave request.

12. Indeed, it is the absence of Mr. Keltie from these proceedings which for reasons which follow is of great significance in this case.

13. The union alleges that the employer has violated various sections of the Act. We do not find it necessary to go beyond section 67 which, essentially, prohibits employment related reprisals imposed as a result of lawful trade union activity. It provides as follows:

67. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

14. We have also considered the significance of the "reverse onus" provision found in section 91(5):

91.- ...

(5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.



15. Although the facts giving rise to the instant application may point to a number of potential and severable issues, the parties, as early as their opening statements before the Board in this matter, agreed that ultimately this case must stand or fall with the Board's evaluation of the refusal of Ms. Madore's leave request and, more specifically whether that refusal was tainted by any unlawful motive. We agree with that assessment.

16. In that context it is important to outline what is and what is not properly part of the Board's consideration in determining the propriety of the leave denial. This is not an arbitration proceeding in which we are called upon to assess the reasonableness of the leave request and its denial. The employer may well have been unreasonable in denying the leave request. It does not follow, however, that the denial was therefore tainted by any unlawful anti-union animus. Similarly, the employer may well have legitimate reasons for having denied the request. Notwithstanding that if any part of the employer's motivation can be related to Ms. Madore's union activity that will be sufficient for the Board to conclude that the employer's conduct was unlawful. Thus, though not its primary task, it is not unusual for the Board to inquire into the reasonableness of the employer's conduct and conclude, in the appropriate case for example, that conduct in question was so unreasonable that the proffered reasons are unlikely to be the real reasons for the conduct. The object of the exercise is not principally to assess the appropriateness of the impugned conduct but rather to insure that it is not tainted by unlawful motives. It is here, of course, that consideration of the reverse onus may become critical. In proceedings to which this provision applies (and it was not disputed that it applies here) it is up to the employer to come forward and provide the necessary evidence and explanations for its conduct to allow the Board to conclude that, whether or not the Board is otherwise impressed by the conduct, there is no prohibited motive at work.

17. The employer in this case has failed to do that.

18. Although we heard from numerous employer witnesses, some of whom were fairly highly placed within the company, we heard no evidence from Mr. Keltie, the person everyone agreed made the decision in question without any meaningful participation on the part of any of the company representatives who did testify. In other words, while the parties have agreed that an assessment of the company's motive in denying the leave is, effectively, the central issue that will determine these proceedings, the fact of the matter is we simply have no direct first hand evidence regarding the reasons for the company's decision. The evidence we did hear established that only Mr. Keltie could provide us with any such first hand evidence; he did not. While it might be possible to construct a derivative theory to explain the company's decision based on the evidence (mostly hearsay on the point) of other witnesses and the submissions of counsel, we are simply unable to ignore the fact that the person who presumably had the first hand direct evidence on the central issue in these proceedings did not testify.

19. When we couple Ms. Madore's open and highly visible union activity with the lack of any direct evidence to explain the company's decision, we can only conclude that the employer has failed to meet its statutory onus in these proceedings and that its conduct was tainted, at least in part, by motives prohibited under section 67 of the Act. We are thus satisfied that the employer has violated that section of the Act in having refused to grant the leave of absence requested by Ms. Madore. We therefore direct that Ms. Madore be forthwith reinstated to her former position with the company. In the circumstances of this case and having regard to the submissions of the parties, the Board remains seized with respect to any matter arising out of the Board's decision, including quantum of compensation for any damages arising out of the responding party's violation of the Act. We would take the opportunity to observe, however, that the union might have considerable difficulty arguing that any compensation at all ought to be awarded in respect of a period of time for which the grievor had requested leave of absence.

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**1517-94-OH Pauline Au, Applicant v. Lyndhurst Hospital, Responding Party**

**Discharge - Evidence - Health and Safety - Practice and Procedure - Applicant alleging violation of *Occupational Health and Safety Act* on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case**

**BEFORE:** K. G. O'Neil, Vice-Chair, and Board Members R. W. Pirrie and Pauline R. Seville.

**DECISION OF KATHLEEN O'NEIL, VICE-CHAIR AND BOARD MEMBER PAULINE R. SEVILLE;** November 23, 1995

1. This is a complaint under the *Occupational Health and Safety Act*, (referred to below as OHSA) in which the responding party asked that the matter be dismissed without a hearing for want of a *prima facie* case. After the hearing on the preliminary motion, the panel gave the parties the opportunity to make further submissions in writing on whether the Board should on its own motion stay the proceedings in light of proceedings which had been commenced before the Human Rights Commission. In response to that request, the parties advised that Ms. Au had withdrawn the complaint from the Human Rights Commission and the employer took the position that the issue of a stay of the Board's proceedings was no longer an issue. In the result, neither party argued for deferral and the question of whether to stay the Board's proceedings in light of the proceedings outstanding at the time of our request for submissions is now moot.

2. We are required to assume at this stage that everything the applicant claims is true and provable, although at a hearing it may turn out that crucial elements are either untrue or unproven on a balance of probabilities. The Board has considered the parties' submissions in that light and is of the view that the matter ought not to be dismissed without a hearing for want of a *prima facie* case. Whether or not this is a valid complaint will then be determined on the basis of the evidence and submissions of the parties. Reasons for this ruling are reserved until the conclusion of this matter.

3. The matter is referred to the Registrar to be set down for hearing after consultation with the parties. This is not an undertaking that the matter will be scheduled on consent, but only an indication that the Registrar's office will contact the parties as to their availability before setting the next hearing date.

**DECISION OF BOARD MEMBER R. W. PIRRIE;** November 23, 1995

1. I dissent from this decision.

2. In its simplest form, this complaint centres on the following allegations:

- (1) Ms. Au's belief that she was sexually harassed at work by her supervisor.
- (2) The harassment caused her to feel unsafe at work.
- (3) As a consequence Lyndhurst Hospital was in violation of section 25(2)(h) of the *Occupational Health and Safety Act* - "...an employer shall take every precaution reasonable in the circumstance for the protection of the worker".



- (4) Ms. Au's subsequent termination was not due to the hospital's financial constraints, but was in fact a reprisal for her having reported this sexual harassment incident, and
- (5) The reprisals are a violation of section 50 of the OHSA, and as such come before the Ontario Labour Relations Board under section 50(3).

3. In my view the first issue the Board must decide is whether it has jurisdiction to hear this case. Having heard the submissions of the parties, I would uphold the respondent's preliminary motion that sexual harassment in the workplace is not an issue covered by the OHSA, and as such I would dismiss the application on the basis that the Board is without jurisdiction to hear Ms. Au's complaint.

4. Initially the panel decided not to decide the jurisdiction issue, and instead in our decision of July 27, 1995 called for submissions from the parties as to whether we should, in light of Ms. Au's having filed her complaint initially with the Human Rights Commission, exercise our discretion and stay the matter, and in my view at least, defer the matter to the Human Rights Commission. Ms. Au's response was to withdraw her complaint before the HRC, and made no submissions on the issue of deferral. The majority of this panel are now of the view that the question of deferral to the HRC is no longer before us. In the alternative to my initial basis for dissent, I dissent from that view of my colleagues. Whether or not the Board chooses to defer to another forum, which the Board does on numerous occasions, is not a function of whether a party has or has not started a proceeding in the other forum. The decision is based on whether the other forum is the appropriate one in which a given case should be heard. In my view Ms. Au's action in withdrawing her HRC complaint is nothing but an attempt to prevent this Board from exercising a perfectly legitimate and proper discretion. I am unmoved by her action, and in the alternative to dismissing her application on the question of jurisdiction, I would require her and the respondent to make the submissions originally requested. If Ms. Au fails to do so, the Board should then decide whether to exercise its discretion based on its own motion. Needless to say based on what I have already noted, and what follows, I would in the alternative refer Ms. Au back to the HRC.

5. My following comments then are the reasons for my decision that the Board does not have the jurisdiction to hear this matter.

6. Let me at the outset emphasize that my comments should in no way be taken as minimizing my concern for the issue of harassment in the workplace. And let me also emphasize that I find it regrettable in the extreme that an individual with a complaint under the HRC must wait years to have their complaint dealt with. Nor should my comments be construed as having prejudged Ms. Au's belief that she was sexually harassed and as a consequence has a legitimate complaint. The legitimacy of her complaint will be determined on the basis of evidence heard in the appropriate forum.

7. My difficulty with this decision is that the majority of the panel have, in my respectful opinion, misread the scheme of Ontario's legislation as it applies to this, and by inference, other situations giving rise to an employee feeling unsafe in the workplace. There are circumstances where a worker may, with good reason, feel unsafe in the workplace. However it is clear not all circumstances fall within the parameters of the OHSA.

#### Example

- a qualified truck driver, driving a licensed truck on the highway - another



driver drives on the highway in such a way as to endanger the truck driver - this is a matter for the police under the *Highway Traffic Act* - that the truck driver feels unsafe in his workplace is surely not a matter relative to the OHSA

#### Example

- a worker brandishes a revolver in the office in such a way as to endanger his fellow workers - this is a matter for the police under the *Criminal Code* - that his fellow workers felt unsafe in their workplace is surely not a matter relative to the OHSA

The Board must look at the cause of a worker believing he or she is unsafe in the workplace in the first instance, in order to determine if the cause is one which falls within the ambit of the OHSA.

8. If one reads the OHSA in its totality it is, in my opinion, manifestly clear that it was never intended by the legislature that a feeling of being unsafe at work because one is sexually harassed was an issue to be covered by the OHSA. It is an enormous stretch of the intent of the Act as I understand it, and an enormous stretch of the language of that Act as I read it to suggest that sexual harassment which leads to a sense of feeling unsafe fits within the parameters of section 25(2)(h).

9. Conversely it is, in my opinion, abundantly clear that the HRC was put in place by the legislature to specifically deal with complaints such as Ms. Au's. The processes under the HRC are designed to deal as effectively as possible with the issue of harassment in all its forms, and through interventions such as coaching, counselling, training, etc. to correct individual and group behaviour which offends the Act. At its best the *Ontario Labour Relations Act* results in an adversarial adjudicated decision. The outcome of an OLRB adjudication will result in a decision - yes the adverse employment event which the employee experienced was as a consequence of having reported an unsafe working condition - or, no - the two events were not related. The issue of sexual harassment in the workplace may very well not get dealt with in our process. That cannot be the intended or desirable outcome for the employees in general, the complainant, the accused harasser, and the management directly involved, or for society at large.

10. By finding that Ms. Au's complaint should not be dismissed without a hearing, the majority of the panel has decided that the OLRB has jurisdiction to hear the matter. It is my opinion that hearing this matter results in so many inconsistencies that it can only be the case that the legislators never intended such a course of action. Just a few such inconsistencies emphasize my concern.

11. This case concerns itself with a violation of the OHSA stemming from sexual harassment in the workplace. To admit sexual harassment under the OHSA is to admit harassment in the workplace based on any of the prohibited grounds set out in the HRC e.g. race, colour, sexual orientation, age to name a few.

12. For example, I am an older worker, I believe my supervisor is harassing me because I am an older worker. I complain to my employer that I feel unsafe at work because of the harassment, something happens to my employment for whatever reason - the OLRB will entertain my complaint that the action is a reprisal for my having complained about the perceived harassment due to my age. I can only repeat that the OHSA was not intended to deal with such issues. To read the OHSA in such a way that it does, is to significantly alter the legislative scheme of the province which is not the role of the OLRB.

13. Up until now employers had a fairly clear understanding as to what to do in a case of a workplace harassment situation. One contacted the HRC for assistance in dealing with the matter. Not so if this decision stands. Any employer who does not also contact the Occupational Health and Safety Branch puts themselves at considerable risk. Now we will have on hand an investigator from the HRC and one from the OH&SB. That cannot be the original intention, and aside from making work for already overworked government inspectors that cannot be a result which the Board should cause to happen.

14. Reading the OHSA to cover workplace harassment gets employers and complainants into some very dangerous territory with far reaching consequences. While this is not specifically a work refusal case, the fact of admitting harassment leading to an unsafe workplace as a condition covered by the OHSA will, in the opinion of many, lead to work refusals. The OHSA is very clear in its direction to employers in the face of a work refusal. It provides that an employer may assign another worker to do the work of a complaining employee, but prescribes the circumstances under which this may occur. The employer must advise the substituting worker of the complaining workers refusal to work, *and of his or her reasons for the refusal.* (see section 43(11))

(emphasis added)

15. For example, Mary goes to the company and complains her supervisor Frank is sexually harassing her. Mary's job is critical to the company's operation and the company asks Susan to do the work. First however and before the completion of any investigation the company must advise Susan that Mary has reasonable grounds to believe the workplace is unsafe because her supervisor Frank, is sexually harassing her.

16. In my respectful opinion such a scenario was never contemplated and was never intended by the drafters of the OHSA. Under the Act the requirement that causes the employer to divulge that the supervisor may be a sexual harasser is that the complainant initially "believes", and following an in-house investigation, "has reasonable grounds to believe". One has no trouble envisioning the line-up of lawyers to launch defamation of character lawsuits on behalf of the supervisor against both the complainant and the employer. Will the courts accept as a standard of proof that the complainant had "reasonable grounds to believe"? Will the courts accept an employers defence that the OHSA required it to divulge the complainant's accusation? One cannot read one provision of the OHSA i.e. section 25(2)(h) without reading the Act in its entirety and reasonably considering all of the consequences of doing so.

17. Certain institutions in our society have complex relationships between the employees - both management and non-management, and the users of the services of the institutions. A case in point is the university setting. Recognizing this, most colleges and universities have put in place elaborate sexual harassment programs. Such programs aside, let me use the example of two females being sexually harassed by the same individual - he a university professor. One of the females is a student in the professor's program, the other is a university employee in the professor's department. This decision to hear Ms. Au's complaint stands for the proposition that the student can only file a complaint with the HRC, whereas the employee can have her case heard before the OLRB. The same individual doing the sexual harassing, two different courts of recourse and potentially because of the processes, two different results. This cannot be what the legislators intended.

18. These and many other logical inconsistencies serve to point out, in my considered opinion, that the majority decision in this case is fundamentally wrong on the grounds that it exceeds the Boards jurisdiction as represented by all of the relevant Ontario legislation. As a last note, let

me again say that I regret the position that complainants to the HRC find themselves as a result of delay. That in my view is something the government should address. That said, I have a genuine concern that to suddenly open the OHSA to all forms of harassment will have many and far reaching consequences:

- the workers who the OHSA was originally intended to protect are going to be less well served due to the inspectors being involved in workplace harassment cases;
  - the workers, unions and employees who the *Labour Relations Act* is designed to regulate will be less well served due to the Boards time being occupied with workplace harassment cases, and
  - the workplace in general and those employees who experience harassment in the workplace in particular, may ultimately be less well served due to the nature of the Board's adjudicative process, as opposed to that of the HRC, designed as it is to specifically deal with such situations.
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**2444-95-U** Service Employees International Union, Local 532, Applicant v. Meadowcroft Holdings Inc., c.o.b. as Execu-Care Nursing Services, 5M Management Services Limited, and Meadowcroft Limited Partnership, c.o.b. as **Meadowcroft Place (Guelph)**, Responding Parties

**Hospital Labour Disputes Arbitration Act - Reference - Board finding residential facility for aged or infirm to be "hospital" within meaning of *Hospital Labour Disputes Arbitration Act***

**BEFORE:** *Laura Trachuk*, Vice-Chair, and Board Members *R. W. Pirrie* and *C. McDonald*.

**APPEARANCES:** *Luiza Monteiro* and *Ron Roscoe* for the applicant; *Wesley Emerson* for the responding parties Meadowcroft Holdings Inc., c.o.b. as Execu-Care Nursing Services and Meadowcroft Limited Partnership, c.o.b. as Meadowcroft Place (Guelph); no one appearing for 5M Management Services Limited.

**DECISION OF THE BOARD;** November 27, 1995

1. This is a ministerial reference pursuant to section 3(2) of the *Hospital Labour Disputes Arbitration Act* (referred to in this decision as HLDAA). The question which has been referred to the Board for its advice is the following:

Is the employer a "hospital" within the meaning of the *Hospital Labour Disputes Arbitration Act*?

The parties filed submissions with the Board and agreed on the first day of hearing that the Board should determine the matter on the basis of those materials.

2. After carefully reviewing the material filed, it is our advice to the Minister that the



employer is a hospital within the meaning of the *Hospital Labour Disputes Arbitration Act*. Our reasons for that advice follow.

3. The parties agreed during the certification process that the three entities named as the responding party above were related employers for the purpose of the *Labour Relations Act*. Meadowcroft Limited Partnership, c.o.b. as Meadowcroft Place (Guelph) (referred to as “Meadowcroft” in this decision) is a residential facility for aged and infirm individuals. It provides accommodation and care services for residents which include: provision of meals; housekeeping; laundry; bathing assistance; nursing care; a call system and medication administration. Meadowcroft Holdings Inc., c.o.b. as Execu-Care Nursing Services (referred to as “Execu-Care” in this decision) provides further care to the residents on a contractual basis. The related employers will be referred to together as the responding party in this decision.

4. There are approximately fifty residents at the facility, seventy-five percent of whom are over seventy-five years of age. They suffer from a wide range of ailments including; Alzheimer’s disease; stroke related conditions; dementia; incontinence; deafness; blindness; mobility problems and diabetes. Two residents are developmentally disabled. There are approximately twenty residents at the facility who require some assistance with the activities of daily living such as dressing and toileting. Approximately fifteen need only light assistance, although almost all require assistance with bathing. A disputed number (somewhere between three and twelve) require total care. The majority of the residents receive medication. Some require their blood pressure to be monitored and dressings changed. Periodic room checks are performed on the night shift to monitor the residents’ condition.

5. The responding party has capacity for fifty-five residents. There is a common dining room where most of the residents take their meals, a kitchen, a laundry room and a small lounge. There are approximately sixteen private rooms and the remaining rooms house two or three residents each. There are no kitchen facilities in any of the rooms. None of the rooms have locks on the doors. The front door of the facility is locked. Some residents have the code and some do not. Residents must sign in and out.

6. There are approximately twenty-seven employees in the applicant’s bargaining unit including: a director of care/charge nurse; 7 registered practical nurses; 8 health care aides; 2 cooks; 3 housekeepers; 1 maintenance employee and 8 guest attendants. The home provides twenty-four hour nursing supervision and a minimum staffing level of one registered nurse, registered practical nurse, graduate nurse and/or student nurse per shift. One health care aide is also assigned to each shift. The charge nurse or other registered nurses dispense the residents’ medications, both orally and by injection. There is no doctor on staff although a physician visits once per week.

7. Section 1(1) of HLDAA provides as follows:

1.-(1) In this Act,

“hospital” means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged;

“hospital employee” means a person employed in the operation of a hospital;

8. The Minister has had many occasions in which to declare that facilities are hospitals

under HLDAA. The Courts have rendered a number of decisions reviewing the Minister's declarations. In recent years, the Board has also had a number of opportunities to advise the Minister. When the facts of this case are viewed in terms of that jurisprudence, we must conclude that the responding party is a "hospital" under HLDAA. The responding party is a long-term residential facility for people who require care of varying degrees. It is the sort of facility in which the residents would be placed at risk in the event of a strike or lock-out. As more than seventy-five percent of the residents are over seventy-five years of age and all are over fifty years, it can be characterized as a home for the aged under HLDAA. In *Carefree Lodge v. Ontario Nurses Association et. al.* (Ont. Div. Ct. unreported, November 2, 1976), the Court held "that the words "home for the aged" in the *Hospital Labour Disputes Arbitration Act* are to be given their plain and ordinary meaning". (See also *Nel-Gor Castle Rest Home v. London District Service Workers' Union et. al.* (Ont. Div. Ct. unreported, March 19, 1985). The Court has also held that an institution need not be providing "observation, care or treatment" of a medical nature in order to be found to be a hospital under the Act. In this case the residents are receiving "observation, care and treatment" of both a medical and non medical nature. The "institution" in this case is similar to others which the Board has advised the Minister were hospitals under HLDAA in the past few years. The facts in this case are particularly similar to those in *Goderich Place Retirement Residence*, [1995] OLRB Rep. April 416.

9. The responding party argues that these facts are distinguishable from the previous decisions of Minister, Board and Court because the care provided by Meadowcroft and Execu-Care is contractual and the residents could purchase those services from another source although none of them do. The services provided by Meadowcroft as described in paragraph 3 of this decision appear to be included in the price of "accommodation" at the institution and are presumably an important part of the reason people become "residents" there, i.e. they need some care. The services provided by Execu-Care are more clearly contracted on an "as needed" basis. However, care is obviously being provided by the responding party, even if it is through one or two of the three companies which together comprise the employer in this case. The residents are dependent on the care being provided by the responding party employer and would be at risk in the event of a strike or lock-out in the same way as the residents in *Carefree Lodge*, *supra*, *Ne-Gor Castle*, *supra*, and *Goderich Place*, *supra*. The responding party relied upon the Board's decision in *Canadian Red Cross Society*, [1995] OLRB Rep. May 612. However, that decision is easily distinguishable on the facts. The applicant in that matter was a provider of part-time (up to 20 hours per week) care services to individuals in their own homes. The Board found that in those circumstances the provider of the service was not a "hospital" and therefore its employees were not hospital employees. In this case the responding party is providing accommodation in terms of a room and "observation, care and treatment" on a twenty-four hour basis. This responding party is, for all intents and purposes, a "hospital" for the purposes of HLDAA.

10. For all of the above reasons, the Board answers the question posed by the Minister in the affirmative.

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**0996-95-R** Ram Seenanan, on his behalf and on behalf of a group of employees of Metro Taxi Ltd. c.o.b. as Capital Taxi, operating as taxi owners and/or taxi drivers, Applicant v. United Steelworkers of America, Responding Party v. **Metro Taxi Ltd.** c.o.b. as Capital Taxi, Intervenor

**Parties - Practice and Procedure - Strike - Timeliness - Termination - Steelworkers' union alleging that termination application untimely as having been brought within six months of commencement of strike - Employer disputing that strike occurred - Board rejecting union's submission that employer ought not to be permitted to intervene in application to raise strike issue - Board finding that picketing by bargaining unit members was concerted activity intended to restrict or limit output (although it did not have that effect) - Application dismissed as untimely**

**BEFORE:** *M. Kaye Joachim*, Vice-Chair, and Board Members *Orval R. McGuire* and *B. L. Armstrong*.

**APPEARANCES:** *Bruce Sevigny* and *Ram Seenanan* for the applicant; *R. Healey*, *H. Ghadban*, *Haile Gebraslasie* and *Melhem Rahme* for the responding party; *Andrew Tremayne* and *Marc André Way* for the intervenor.

**DECISION OF M. KAYE JOACHIM, VICE-CHAIR, AND BOARD MEMBER, B. L. ARMSTRONG;** November 21, 1995

1. This is an application under section 58 of the *Labour Relations Act* for a declaration that the responding party no longer represents the employees in the bargaining unit for which it is the bargaining agent. The application was filed on May 30, 1995.

2. The responding party, the United Steelworkers of America ("Steelworkers" or the "union") filed a response dated June 15, 1995, alleging that the application is untimely by virtue of subsection 62(3) of the Act and therefore should be dismissed by the Board without a further hearing. Subsection 62(3) states:

**62.-** (3) Where a trade union has given notice under section 14 and the employees in the bargaining unit on whose behalf the trade union was certified as bargaining agent thereafter engage in a lawful strike or the employer lawfully locks out the employees, no application for certification of a bargaining agent of, or for a declaration that the trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made,

- (a) until six months have elapsed after the strike or lock-out commenced; or
- (b) until seven months have elapsed after the Minister has released to the parties the report of the conciliation board or mediator or a notice that the Minister does not consider it advisable to appoint a conciliation board,

whichever occurs first.

3. The union alleges that a lawful strike commenced on May 25, 1995, and six months have not elapsed after the strike commenced nor have seven months elapsed after the "no Board" report was released on April 29, 1995. In addition, the union disputes the voluntariness of the petition submitted with the application.

4. On June 27, 1995, the intervenor (also the "employer") filed a detailed response to the union's response to the application. The employer submitted that the bargaining unit employees



did not commence a strike, lawful or otherwise, at any time between May 25 and May 30, the date of the application. Accordingly, the employer argued that the application was timely.

5. The union objected to the employer raising the issue of whether a strike had occurred on the grounds that the Board ought not to permit the employer to intercede in the determination of employees regarding representation by a bargaining agent.

#### Employer's Intervention

6. The Board heard and considered the submissions of the union with respect to the employer's right to intervene in these proceedings to raise the issue whether a lawful strike had commenced between May 25 and May 30, 1995. The employer and the applicant argued that the employer should be entitled to intervene and raise those matters. The applicant indicated that if the employer were not entitled to raise those matters, the applicant would be raising them in response to the union's motion regarding timeliness of the application.

7. The union relied on the case of *Re Canada Labour Relations Board and TransAir Ltd.* 67 D.L.R. (3d) 421 S.C.C. for its position that where there are no employees taking the position that no strike occurred, the employer ought not to be allowed to intervene in this matter regarding the representation of employees to assert the rights of third party employees. At page 438, the Court stated:

If there is any policy in the Canada Labour Code and comparable provincial legislation which is pre-eminent it is that it is the wishes of the employees, without intercession of the employer (apart from fraud), that are alone to be considered vis-a-vis a bargaining agent that seeks to represent them. The employer cannot invoke what is a *jus tertii*, especially when those whose position is asserted by the employer are not before the Court.

8. The applicant also referred to the Board decision of *P. H. Atlantic Plumbing and Heating Division of 629629 Ontario Limited* [1991] OLRB Rep. Jan. 97. which quoted and applied the *TransAir* decision.

9. The Board ruled orally at the hearing that it would permit the employer to participate in these proceedings as an intervenor and to raise the issue of whether a lawful strike had occurred. There was no dispute that the employer was otherwise entitled to intervene in these proceedings.

10. The Board has a discretion to grant intervenor status and to set the limits of that status. In this case, the Board chose to exercise its discretion in favour of granting the employer status to dispute the issue of whether a lawful strike occurred, for the following reasons:

- (1) The Board has consistently considered that employers have an interest in the outcome of applications concerning representation of employees, both certification applications and decertification applications.
- (2) The applicant has indicated that it supports the argument sought to be introduced by the employer and would in any event adopt such argument and evidence for its own, whether or not the employer is permitted to do so.

#### Timeliness

11. The Board heard the evidence of Harry Ghadban, staff representative of the Steelwork-

ers, Haile Gebraslasie a driver, and Marc André Way, General Manager of Metro Taxi, c.o.b. as Capital Taxi ("Capital Taxi").

12. Capital Taxi owns and operates a fleet of approximately forty-five vehicles. Each of the vehicles is equipped with a radio set to the Capital Taxi dispatch frequencies, the Capital Taxi roof sign, and a taxi fare meter. The vehicles are made available on a daily basis to drivers who pay a rental fee for the use of the vehicle for a twelve or twenty-four hour period. There are approximately fifty-six rental drivers employed by Capital Taxi.

13. Capital Taxi also provides dispatch services for approximately forty-three individuals who own their own taxi licences and vehicles. These owners pay a monthly stand rent, which entitles them to operate a Capital Taxi sign, receive dispatch requests, and access taxi stands.

14. There are approximately forty-two individuals who lease a taxi licence from Capital Taxi. These individuals own their own vehicles and equipment, but do not own a taxi licence plate. These lessees pay a monthly lease rate for the taxi licence plate as well as the monthly stand rent.

15. All the drivers, owners and lessees (sometimes referred to as "drivers") described above are considered to be employees of Capital Taxi for the purposes of the *Labour Relations Act*.

16. Approximately 100 drivers operate in the Ottawa area while the remaining 40 operate in Vanier and Gloucester.

17. On May 25, 1994, the Board certified the Steelworkers as the exclusive bargaining agent for all employees of the Metro Taxi Limited c.o.b. as Capital Taxi, subject to certain exclusions. The bargaining unit consists of all drivers, lessees and owners.

18. By letter dated June 27, 1994, the union served the employer with notice of its desire to bargain pursuant to section 14 of the Act. By request dated August 30, 1994, the union requested the Minister to appoint a conciliation officer pursuant to section 16 of the Act. On September 12, 1994, the Minister of Labour appointed a conciliation officer to confer with the parties and to endeavour to effect a collective agreement between them. On or about March 16 and 17 and April 12 and 13, 1995, the parties met with a conciliation officer. Some progress was made between the parties with respect to a collective agreement. On April 13, the union requested that a "no Board" report be issued. By letter dated April 29, the Minister issued a notice in writing to the parties that she did not consider it advisable to appoint a conciliation Board. The parties continued to meet with a conciliation officer to endeavour to effect a collective agreement on April 25, May 5 and May 9.

19. On May 12 and 13, the parties met with a mediation officer. On May 13, the employer tabled what it characterized as its final offer. In reviewing the employer's final offer, the union's negotiating committee discussed taking the offer to the bargaining unit members with a recommendation to reject the offer. However, Mr. Ghadban testified that because of the potentially divisive nature of these proposals the union decided not to take the proposal to its members for a ratification vote. The union was concerned that the employer's offer, which significantly increased the fee payable by drivers in Vanier and Gloucester but not in Ottawa, would have a divisive effect on the bargaining unit.

20. Mr. Ghadban described his experience of organizing strikes in this industry. He described strikes in the taxi industry in which the drivers shut down the company's dispatch system, strikes in which the drivers refused to pay fees to the employer but continued to run fares, and

strikes in which the drivers had refused to move from the airport parking lot. He testified that over the years the union had had to learn how to strike a balance between applying pressure to employers and the effect of losing customers.

21. In deciding whether to call a strike and, if so, what form of strike to call, the union considered the effect of a strike on the bargaining unit, the effect of a strike on subsequent first contract arbitration, if any, and the union's desire to put pressure on the employer to come back to the bargaining table to change their final offer. In this particular bargaining unit, the employees were concerned that a complete shutdown would result in a loss of customers. Therefore, in order to encourage the bargaining unit members to participate in the strike while at the same time reassuring them that the union was attempting to minimize their loss of income and customers, the union decided not to request the employer to shut down the dispatch service. Accordingly; Mr. Ghadban prepared a flyer on May 24th which was handed out to drivers on the street which stated as follows:

RETAIL WHOLESALE CANADA

CAPITAL TAXI ON STRIKE

Effective May 25, 1995 at 12:00 noon, we are going on strike to show our displeasure with the Company's offer for a collective agreement.

See you at the Company office on 12:00 noon on Thursday May 25.

Our intention is to put maximum pressure on the Company, while at the same time minimize any inconvenience to our customers.

Our fight for fairness is with the Company and not the customers we serve.

We will plan and carry out specific actions directed against the Company but are not requesting the Company to shut down the dispatch system.

We ask you to participate in all actions in order to get the collective agreement we deserve.

It is not acceptable to have Vanier and Gloucester plate lease rents to almost triple, and in Ottawa the cab rents and plate rents have historically only increased when a meter increase became effective.

It is not reasonable to expect us to pay more when business is not increasing.

We believe that the Company offer is insulting to all of us, and we will not accept anything less than a fair contract and not the Company's view of what is fair.

We are in the process of setting up a strike support committee, and anyone interested in volunteering please contact your negotiating committee.

Issued by: Ontario Taxi Union Local 1688, Retail Wholesale Canada, Div. of USWA, the Capital Taxi Negotiating committee

22. Also on May 24, the union advised the employer in writing as follows:

Please be advised that the bargaining unit will be on strike commencing at 12 noon on Thursday, May 25, 1995.

23. The next day, on May 25, 1995, the employer's counsel wrote to the union and advised that:

In our view, the proposed action described in your flyer does not constitute a strike or work



stoppage. You have not requested that the Company shut down the dispatch system, nor have you requested the employees to return all rental vehicles, plates and equipment. The company will, therefore, conduct its business as usual. All terms and conditions of employment remain intact and all drivers are expected to continue making regular rental payments.

24. On May 25, 1995, approximately twenty-five to twenty-eight people arrived at the employer's premises at noon. The group consisted of bargaining unit employees and staff representatives of the union. Signs had been prepared stating that the employees of Capital Taxi were on strike. The picketers took the signs and marched across the sidewalk of the employer's premises from noon until approximately four p.m. that day.

25. Mr. Ghadban was interviewed by a reporter of the Ottawa Sun who quoted him in an article the following day as stating "we didn't want to pull everyone off the road and alienate the public. The dispute we are having is with a company, not the general public". Mr. Ghadban is also alleged to have said that the union is asking drivers to volunteer for the rotating pickets and that the protest could escalate into a full strike. Mr. Ghadban testified that he used the words "full shut down", not "full strike". In the Board's view, nothing turns on whether Mr. Ghadban used the words "full strike" or "full shut down" as it appears that Mr. Ghadban's position throughout the process has been that the employees have been on strike since May 25th.

26. The picketing continued May 26, 29, 30 and 31, June 1, 2, 5, 7, 9, 12, 14 and 16. On those days approximately fifteen to eighteen bargaining unit members and union staff arrived at the employer's premises at noon and walked across the employer's premises for one to three hours with signs stating that they were on strike against Capital Taxi.

27. On May 26, 1995, Mr. Ghadban distributed a flyer outlining some common questions and answers concerning employer conduct during a strike. The flyer was prepared in response to questions from a number of people who had attended on the first day.

28. On June 16, 1995, the negotiation committee decided that they were not getting the kind of participation that they needed. The union decided to apply for first contract arbitration and did so by letter dated June 16, 1995. A hearing was scheduled for October 12, 1995.

29. The employees who spent time on the picket line were paid strike pay out of the union's strike fund. During the picketing, Mr. Ghadban spoke to a few members of the public. He also spoke to other employees in the bargaining unit, urging them to join the picket line.

30. Haile Gebraslasie, a driver of Capital Taxi, testified that he shares the rental of a vehicle with another driver. His hours of access to the cab are 4 a.m. to 3.30 p.m. He testified that he generally works throughout that period, either waiting at a taxi stand, driving around the city, or picking up fares. He agreed that the company did not require him to spend twelve hours in his cab and that he would not be penalized in any way by the company if he did not do so. He agreed that if he did not respond to a call from the dispatch, the only consequence to him would be the loss of that call. There would be no disciplinary consequences to not answering a dispatch call.

31. Mr. Gebraslasie noted that by attending at the picket line on the days that he did, he lost the opportunity to obtain fares during that time. He agreed that the noon time was generally a slow time for him.

32. Marc André Way, General Manager of Capital Taxi, described the general operations of the employer. He noted that the drivers are charged a daily rate (payable weekly) for a period of either twelve hours or twenty-four hours. Lessees and owners are charged on a monthly basis

for the upcoming month. Mr. Way stated that all rental fees which were payable on Friday, May 30, were paid.

33. Mr. Way testified that the company does not set schedules for their drivers or set minimum fares for drivers to collect. The rental fees were flat fees, and the company does not take any percentage of the drivers' earnings.

34. The business of attracting taxi customers is derived from five sources: corporate accounts, taxi stands, flags (customers picked up from the street), direct lines, (telephones with direct lines to the company's head office) and advertised telephone lines. Calls which come in from corporate accounts, direct lines or advertised telephone lines are given to the dispatcher. The dispatcher determines the geographic zone of the call and goes down a list of the car numbers in the area in order until a driver acknowledges and accepts the fare. If a driver who has put himself/herself on the list does not answer, the dispatcher moves down to the next one on the list.

35. At the commencement of the strike, Mr. Way asked his dispatch staff to advise him of any customer complaints or any unusual activities arising as a result of the "strike". Mr. Way testified that during the days on which the pickets occurred, business operations continued as usual. There was no disruption to the normal business operations. There were no customer complaints related to the picketing. Calls came through in the usual manner and were dispatched in the usual manner.

36. Mr. Way also spoke to the Ottawa Sun Reporter and was quoted in the newspaper the next day stating that it was business as usual on the day of the strike: "Our operations weren't at all affected".

37. Mr. Way asked his assistant to prepare a comparison of the number of calls received on the first two days of the strike with the number of calls received during that time period in the previous three years. He was advised by his assistant of the overall numbers and concluded that there was no significant change in the number of calls received during the first two days of the strike. Mr. Way did not request any further analysis of calls received during the remaining days of the strike.

38. Mr. Way testified that the company did not suffer financially in any way as a result of the union's actions. Mr. Way agreed that the company could be affected if drivers left and paid their fees to another taxi company.

#### Union's Argument

39. The union stated that the issue was whether the union engaged in activity *designed to* interrupt the employer's business. Section 1(1) of the Act defines "strike" as follows:

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees *designed to restrict or limit output*.

40. The union acknowledged that the Board has generally accepted a two pronged approach to the definition of strike. That approach is set out in the decision of *Domglas Ltd.*, [1976] OLRB Rep. Oct. 569, affirmed by the Divisional Court in *United Glass & Ceramic Workers of North America et. al v. Domglas Ltd. et. al* (1978), 19 O.R. (2d) 353:

12. The definition of strike as found in the *Labour Relations Act* appears broad enough to encompass the kind of work stoppage that is the subject matter of this application. On its face, the statutory definition appears to require only that the work stoppage, or other disruption of work, result from the combined or concerted action of employees. The two essential conditions



for conduct to be characterized as a strike, therefore, appear to be 1) concerted employee activity; 2) *some disruption of the employer's operation*. The question is whether we should read into this definition a further condition that the conduct be carried out for the purpose of obtaining concessions from the employer, or some other employer. (emphasis added)

41. However, the union urged the Board to be cautious in applying the *Domglas* test in light of the wording of the Act which refers to activity *designed* to restrict or limit output. The union argued that the test of whether a strike occurred is not only whether the employer's operation was disrupted but also, in some cases, whether it was designed to be disrupted. The union noted that it did not dispute that where the employer's operation was actually disrupted, intention is irrelevant. However, where the union's activity is *designed* to limit or restrict output or to disrupt an employer's operation, purpose or motivation is relevant.

42. The union relied on the case of *The Art Gallery of Ontario*, [1989] OLRB Rep. June 537 for the argument that motivation may be relevant in determining whether picketing activity amounts to a strike. At paragraph 12, the Board stated:

The mere existence of picketing by employees will almost always amount to concerted activity by them. While it may be, having regard to the *ejusdem generis* doctrine, that not all picketing by employees will constitute "concerted activity" within the meaning of section 1(1)(o) of the Act, it was not argued before me that the picketing in this case did not amount to such concerted activity. In any case, the existence of picketing will not, by itself, mean that a strike is in progress or is likely to result. In order for a strike to exist there must be some concerted activity which was designed to restrict or limit output. (See, for example, *Horton CBI, Limited*, [1985] OLRB Rep. June 880, where the Board prohibited picketing because it was designed to and did put economic pressure (by restricting and limiting its output) on the employer to change an assignment of work, not because of the informational component of the picketing). *Consequently, the motivation for picketing (in the sense of its purpose) may be relevant to the issue of whether or not it constitutes an unlawful strike or other unlawful conduct. (See Bay Tower Homes Company Ltd. [1988] OLRB Rep. March 29).* (emphasis added).

43. The union argued that the union's activities did in fact disrupt the employer's operations. The union asked the Board to take note of the nature of the business affected by this application. In the taxi business, the employer's "business" is getting taxis on the road to service customers so that the employer can collect rental fees from its drivers. The union argued that by engaging in picketing activity, the employees interrupted that business in that some employees left their normal driving duties and picketed for a couple of hours on the days in question. The union compared its activities to an industrial setting where employees strike by stopping work during working hours.

44. To the extent that the employer might argue that these employees did not work regular hours and therefore there was no disruption to the employer's business, the union noted that the Board had rejected the idea that a strike does not occur if employees are not required to work regular hours. Rather, the Board has found that the refusal to work overtime hours does constitute a strike (*Cambridge, Corporation of the City of* [1989] OLRB Rep. Nov. 1095 at paragraph 5.)

45. In the alternative, the union argued that on the evidence before the Board, the Board must find that the union's activities were *designed* to disrupt the employer's operations.

46. The union argued that to refuse to acknowledge this situation as a strike would be to subject employees in the taxi industry to a different labour relations regime. To deny that these employees were engaging in a rotating strike, would be to prohibit any type of rotating strike action by taxi employees. Taxi employees would be in a position of having to choose between a complete work stoppage versus no work stoppage at all. The further implication of that decision would be to deny taxi workers the protection offered by section 62(3) of the Act, which protects



trade unions from decertification applications for six months after the commencement of the strike.

47. The union argued that there is a distinction between no strike versus a weak strike. The union conceded that this was a weak strike and that the union had hoped that more drivers would picket and that therefore more disruption to the employer's business would occur. However, that was not the case. The union compared the situation to the industrial setting in which, for example, a manufacturing operating is able to stockpile produce and thereby defeat, for a short time, the effect of a strike. Similarly, where replacement workers are permitted, they may seriously undermine any intended disruption on the employer's production.

48. The union suggested that to declare that this situation did not amount to a strike would fly in the face of established Board practice to define strikes broadly so as to maintain industrial peace and stability. To adopt a narrow definition of strike would be to cause uncertainty in the taxi industry, with respect to what would be permissible activity during the life of a collective agreement. For example, could drivers refuse to work during the life of the collective agreement as long as they continue to pay their fees? Could drivers picket the company office at any time during the life of the collective agreement?

#### Employer's Arguments

49. The employer noted that the words "designed to restrict or limit output" in the statutory definition of strike in section 1(1) of the Act, have been given a special interpretation by the Board. The Board in *Domglas*, as affirmed by the Divisional Court, has closed the door on reading in a subjective element into the definition of strike. The employer submitted that the Board has not incorporated a subjective element into the definition of strike, but rather the test set down by the Board has been objective. The employer argued that to open the door to a subjective element would be to open the door to uncertainty in this matter.

50. The employer relied on the cases of the *Toronto Transit Commission*, [1984] OLRB Rep. Dec. 1781 and the *Art Gallery of Ontario*, [1989] OLRB Rep. June 537 for the proposition that work stoppages must relate to work that the employees are *assigned to do* during their *scheduled* hours of work. In this case the employees in question have no assigned or scheduled hours. Since drivers employed by Capital Taxi are not required to drive their cabs during the entire period for which they pay fees, their failure to do so for a couple of hours each day does not amount to a strike.

51. The employer argued that the nature of the taxi industry, whereby the employees pay the employer a fee in order to earn income, must be taken into account in this decision. Since the employees paid all fees owed, there was no strike. The employer argued that its position does not deprive the employees of their right to strike, but simply requires them to do so differently than they have on the facts of this case. The employer noted that the concerns of the negotiating committee regarding the impact of the strike on business and the concern that the strike might hurt employees more than the employer, are concerns that are equally applicable to trade unions in most industrial settings.

52. The employer argued that accepting the union's position would have implications on the right of these employees with respect to picketing during the life of the collective agreement. The employer hypothesized that if two or more employees in concert got out of their vehicles and protested outside the employer's premises during the life of the collective agreement, this would constitute an illegal strike. The employer noted that it is not the function of this Board to regulate pickets but rather to regulate strikes.

### Applicant's Arguments

53. The applicant adopted the employer's argument and made the following additional argument. The applicant argued that even if one were to accept the union's position that the test of whether a strike has occurred is whether the activities were *designed* to restrict or limit output, the union has nonetheless failed to meet this test. The applicant emphasized that the evidence of Mr. Ghadban was that the purpose of the strike was to put pressure on the employer to come back to the negotiating table. At no point in his evidence did Mr. Ghadban suggest that the purpose of the strike was to disrupt the employer's business. The applicant argued that while this union did not actively *encourage* members of the public to use Capital taxi, they did not *discourage* them from doing so. He referred the Board to the union's circular in which they emphasized that the union intends to "*minimize any inconvenience to our customers.*" That statement was repeated by Mr. Ghadban and quoted in the Ottawa Sun.

### The Decision

54. This is an extremely unusual situation. The parties did not provide the Board with any case law, nor is the Board aware of any, in which the *union* asserts that they were on strike and the *employer* asserts that they were *not*. The issue of whether a strike occurred must be determined in the context of the statutory definition and in accordance with the Board's jurisprudence, regardless of which party asserts the existence of a strike. A strike is a strike regardless of the implications it has with respect to the timeliness of a termination application.

55. The Board's jurisprudence on the definition of strike is well established. We adopt the Board's test set out at paragraph 12 of the *Domglas* case and quoted in paragraph 40 above.

56. We accept that, where there is *actual disruption* of the employer's business, then an inquiry into the purpose of the work stoppage or the motives of the participants is unnecessary.

57. This is consistent with the Divisional Court's decision in *Domglas* at page 375:

Mr. Cavalluzzo submitted that the work stoppage does not constitute a strike because it was not, as the definition requires, "designed to restrict or limit output" but was designed as an expression of political protest. This point does not appear to have been put in these terms to the Board as none of the majority or minority reasons mention it. The argument is that the purpose must be distinguished from the effect. In the circumstances of this case I cannot agree. The dissenting member in his very able reasons said that employees going fishing together could not be construed as a strike. No doubt this would be true if done by a relatively small number of employees whose absence has a negligible effect on production. But where the labour force is withdrawn (referred to by the dissenting member as a "shut-down") this act must be viewed quite differently. *The effect of the work stoppage cannot in my opinion be divorced from its political purpose. In closing down the employer's business the union must be taken to have intended the necessary consequence which is to limit production.* To cease to produce is to restrict or limit output and in my opinion that by overwhelming inference was part and parcel of the objective of the national day of protest as a show of economic as well as political power.

[emphasis added]

58. The Court concluded that the purpose of the work stoppage cannot be divorced from its effect. In other words, where there is actual disruption of the employer's business, one of the *presumed purposes* must have been to cause that disruption regardless of whether there are other, more dominant, purposes.

59. Thus, where there is 1) concerted employee activity and 2) some disruption of the employer's operation, there is a strike. The disruption will *be presumed* to have been designed or

intended. Where there is actual disruption of the employer's operation, there need be no further inquiry into motive or purpose.

60. Neither the *Domglas* case nor the Board cases following it address the converse situation. Where there is no disruption of the employer's business, does intention or purpose or motivation have any role to play? We think they do. The Board must return to the statutory definition of strike set out in the Act.

- 1.-(1) "strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees *designed* to restrict or limit output.

[emphasis added]

61. The word *designed* implies a purposive component. The Board notes that there may be situations where, although there is no disruption of the employer's operations, the intention or motive of the participants may be relevant. We adopt the reasoning of the Board in *The Art Gallery of Ontario*, [1989] OLRB Rep. June 537 at paragraph 12:

Consequently, the motivation for picketing (in the sense of its purpose) may be relevant to the issue of whether or not it constitutes an unlawful strike or other unlawful conduct. (See *Bay Tower Homes Company Ltd.*, [1988] OLRB Rep. Mar. 259).

62. We emphasize that we are not detracting in any way from the traditional approach taken in *Domglas*. An inquiry into whether a strike has occurred will generally begin with an inquiry into whether there has been concerted employee activity and some disruption of the employer's operation. When the latter is answered in the negative there might then arise an inquiry into whether the participants nonetheless engaged in activity "designed to restrict or limit output".

63. To begin with the traditional approach, has there been concerted employee activity and some disruption of the employer's operation in this case? We think not. It is not in dispute that the picketing activity engaged in by fifteen to twenty-five bargaining unit members for one to three hours per day, amounts to concerted employee activity. However, the parties disagree whether there was any disruption of the employer's business. We find there was not. We accept the evidence of the Capital Taxi's general manager that it was business as usual during the picketing. The company received approximately the same number of calls from potential clients, dispatched the taxis in the usual manner and received rental fees as owed. They received no customer complaints and, to the best of their knowledge, there were no delays in service. The Board finds as a fact that there was no disruption to the employer's business during the period in question.

64. We must now turn to the question whether the union in this case *intended* to restrict or to limit the employer's output or, in other words, intended to disrupt the employer's operation. This employer is in the taxi business. The business can be described as providing taxi service to members of the public through corporate accounts, direct lines, taxi stands, and on the street flags. The employer makes money from the rental fees paid to it by drivers. The employer is not directly affected by the number of customers who use their taxi cabs. However, the employer is indirectly affected, in that if a lack of customers causes drivers to switch to another taxi company, the employer will lose rental or stand fees. Accordingly, the employer advertises its services to the general public (by taxi roof signs, direct lines, taxi stands, and general telephone lines) in an effort to attract customers.



65. The union's activities had all the elements of a strike, albeit, a very weak one. The union committee decided to call a strike, they notified the employer of the strike, they circulated a flyer to bargaining unit members requesting all members to join in the strike, they organized a picket line for one to three hours per day, the picketers carried signs stating they were on strike, and the picketers were paid strike pay for the periods they picketed. The drivers who picketed stopped work and lost the opportunity to collect fares during the time they picketed.

66. Having regard to all the evidence, we are persuaded that the union *intended* to disrupt the employer's business, albeit minimally. The union called upon all bargaining unit members to cease working and to attend at the employer's office. In asking the employees to attend at the company's office, they were asking the employees to stop working and to stop providing the service the employer provides, namely, taxi service to the general public. Had more employees responded, and actual disruption occurred, there would be no question this would be a strike. We do not find it appropriate to decide whether a strike occurred based on the number of people who respond to the strike call. The number of employees who respond may make the difference between a weak strike and a strong strike, but a poor turnout does not negate the fact that a strike was called.

67. The employer and the applicant relied heavily on the case of *The Art Gallery of Ontario*, alleging that the facts were very similar. In *The Art Gallery of Ontario*, the Board found that informational picketing, which did not and was not intended to disrupt the employer's operations, carried on during non-paid lunch hours or by employees not scheduled to work, did not amount to illegal strike activity. The information conveyed the union's dissatisfaction with the employer's monetary offer during collective bargaining negotiations. The picketing employees did not attempt to dissuade anyone from entering the employer's premises, rather they encouraged people to do so. The employer and the applicant argued that in this case the drivers had no assigned hours or schedules and were not penalized in any way for failing to drive during the hours they had access to their cars. Therefore, as in the *Art Gallery of Ontario* case, they urged the Board to find that the drivers were simply engaging in picketing on their own time.

68. The union emphasized that the workers who picketed ceased working their "assigned" hours in the sense that the drivers had access to the cabs but did not carry out their duties in the normal way by driving around soliciting fares, waiting at taxi stands, or answering calls from dispatch. The union argued that this distinguished this case from the facts of *The Art Gallery of Ontario*.

69. The Board has determined that the case does not depend on whether there were assigned or scheduled hours, express or implied. The nature of the taxi industry is such that drivers have access to cabs (or roof signs, as the case may be) during defined periods. There can be no doubt that a refusal by many drivers to drive for long periods would amount to a strike, where it disrupts the employer's business, regardless of the fact that drivers do not have assigned or scheduled hours. The only distinction in this case is that the number of drivers who turned out for the picketing was so small that it caused no immediate impact on the employer's operations. However, the union clearly *intended*, through its invitation to all bargaining unit members, to disrupt the employer's business.

70. In conclusion, the Board finds that the union's activities were designed to restrict or limit output, or in other words, designed to disrupt the employer's operations, during the period of May 25 to June 16, 1995. Accordingly, there was a strike during that period. Therefore, the application for termination of bargaining rights filed on May 30, 1995 is untimely by virtue of section 62(3) of the Act. The application is dismissed.

71. Subsequent to the hearing of this matter, and before this decision was issued, the

*Labour Relations Act, 1995* ("the new Act") has come into force. The Board will therefore apply the provisions of the new Act to its determinations. In the opinion of the Board, the new Act does not affect the disposition of this application.

**DECISION OF BOARD MEMBER O. R. MCGUIRE;** November 21, 1995

1. I agree with the conclusion reached by my colleagues at paragraph 63 which reads:

The Board finds as a fact that there was no disruption to the employer's business during the period in question.

I must however, with respect, dissent from their final conclusion that the union *intended* "... to disrupt the employer's business".

2. I would have held that the union *did not intend* to disrupt the business, based on its flyer of May 24th, where members were told of their union's intention "... to put maximum pressure on the company, while at the same time minimizing any inconvenience to our customers." The flyer also stated that "We are not requesting the company to shut down the dispatch system". Mr. Ghadban testified of the continuing detrimental effect of a strike which shut down another taxi firm in Ottawa. Under those circumstances, I believe that not only did the union not intend to disrupt the business, but they did not want the business disrupted.

3. In the result, I would have decided that because no strike occurred, the application for termination was timely and should be set for hearing.

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**2919-95-U National Basketball Referees Association, Applicant v. National Basketball Association, Responding Party**

**Lock-Out - Board finding that lock-out of referees by National Basketball Association (NBA) in Ontario illegal - Board directing NBA to assign members of NBA Referees' Association to NBA games in Toronto until conciliation processes complied with**

**BEFORE:** *Janice Johnston*, Vice-Chair.

**APPEARANCES:** *Paul Cavalluzzo, Sean Fitzpatrick, Mike Mathis and Paul Mihalak* for the applicant; *Daniel J. Shields, Jeffery A. Mishkin, Howard Ganz, Joel Litvin, Jamin Dershowitz and Beth Pierson* for the responding party.

**DECISION OF THE BOARD;** November 10, 1995

1. This is an application pursuant to section 95 of the *Labour Relations Act* (the "Act") in which the applicant, the National Basketball Referees Association (the "NBRA") seeks a declaration that the responding party, the National Basketball Association (the "NBA") has violated section 74(2) of the Act and that its actions constitute an unlawful lock-out. The NBRA also requests that the Board order the NBA to use its members to referee all games in Ontario and that the Board award compensatory damages to the NBRA's members.

2. Because of the urgency presented in this case I am issuing the following decision quickly and with extremely brief reasons. More complete reasons may issue at a later date.

3. Section 74(2) of the Act states as follows:

74. (2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) seven days have elapsed after the day the Minister has released or is deemed pursuant to subsection 115 (3) to have released to the parties the report of a conciliation board or mediator; or
- (b) fourteen days have elapsed after the day the Minister has released or is deemed pursuant to subsection 115 (3) to have released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board.

4. Many of the facts in this case are not in dispute. However, the interpretation and legal effect of the facts are in dispute. Among the issues in dispute is whether there is a collective bargaining relationship in Ontario - although as noted below the existence of a collective bargaining relationship does not determine whether there is or can be a lawful strike or lock-out in Ontario.

5. In 1977, the NBA voluntarily recognized the NBRA. The agreed upon recognition clause reads as follows:

**Article I**

**Section I** The NBA recognizes NABR as the exclusive collective bargaining representative of persons employed by the NBA as referees, and NABR warrants that it is duly empowered to enter into this Agreement for and on behalf of such employees.

(I note it was amended in the 1983-85 collective agreement by inserting the word "all" before the word persons in the third line).

There is no geographic limitation in this clause, and it is classification specific. In other words, it only applies to referees and its application is not restricted to a particular location or area.

6. The NBA started playing exhibition games in Toronto in 1980. From 1988 to the present, it has caused to be played in Ontario from one to four exhibition games annually. The only exception to this occurred in 1994, as Toronto hosted the World Championship of Basketball that year. Exhibition games always take place in October as they are pre-season games. Whenever the NBA played games in Ontario, the NBA assigned members of the NBRA to referee the games and applied the collective agreement. Such referees were paid in accordance with the terms and conditions of the collective agreement and were entitled to the protection of the collective agreement when they worked in Ontario.

7. In 1992, the highlighted portion of the following clause was added to the collective agreement.

**Article II**

**Section 6.** (a) Except as may be set forth above in this Article II, all matters relating to the assignment and scheduling of referees shall be in the sole and exclusive discretion of the NBA. The foregoing shall not, however, detract from the rights accorded NABR by Section 10 below. Any referee assigned to officiate an NBA game shall be required to accept and perform such



assignment(s) unless, upon request by the referee, the NBA Vice President, Operations, in his sole and absolute discretion, decides to relieve the referee of such assignment.

**(b) To the extent that the NBA controls the assignment of officials for NBA games played outside the United States, the NBA shall assign NABR referees.**

8. The applicant took the position, in essence, that it sought the inclusion of this clause in the collective agreement to ensure that whenever the NBA controls the assignment of referees, it is obligated to use NBRA referees. For example, this could include games played on cruise ships and charity games. In counsel's view, this article is not inconsistent with section one.

9. The responding party argued, in essence, that the addition of this clause to the collective agreement in 1992 proves that prior to 1992 the NBRA did not have bargaining rights outside the USA. If they did, then in counsel's view, there was no need for section 6(b). Counsel argued that Article 6(b) was inconsistent with the NBRA's interpretation of section 1.

10. I do not accept counsel for the NBA's characterization of section 6(b). It is not inconsistent with section one. In any event, it was acknowledged by the NBA that they had applied the collective agreement to any NBA games referred by members of the NBRA outside the United States. Section 6(b) merely reinforces the obligations of the NBA, which are created by section 1.

11. The most recent collective agreement expired in September, 1995. The parties tried unsuccessfully to negotiate a new collective agreement and on October 1, 1995 the NBA "locked out" the referees. Therefore the NBA has prohibited the referees from working in any of the pre-season or regular season games in Ontario and elsewhere.

12. The issue before the Board is whether or not that "lock out" is legal under the Ontario labour relations legislation. Counsel for the applicant argued that the fact that the parties have not undergone the mandatory conciliation procedures required by the Act makes the lock-out unlawful in Ontario.

13. Counsel for the NBA argues that the Ontario legislation does not apply to the situation currently before the Board. Counsel argued that there is no employment relationship between the NBA and the NBRA in Ontario as the NBA does not come to Ontario on a regular basis. Therefore, when the referees work in Ontario they are not employees of the NBA and the NBA is not their employer. Given this, counsel argued that the NBRA cannot be a trade union as that term is defined in the Act, there can be no voluntary recognition of the Association by the employer, the NBRA cannot have any collective bargaining rights for referees working in Ontario and no collective agreement can be in existence under Ontario law. However, it is conceded that the individuals in question are employees of the NBA in the USA, and that the work is subject to the NBA's direction and control when they referee games in Ontario. Likewise it is conceded that the NBRA is a union with employees in the USA.

14. The Board had before it in April of this year a case which is strikingly similar to the one currently before the Board. That case involved the Association which represents the major league baseball umpires and baseball clubs, *The American League and The National League of Professional Baseball Clubs and The Toronto Blue Jays Baseball Club*, [1995] OLRB Rep. April 540. (For ease of reference I will refer to this decision as the "Umpires' decision"). The facts were briefly summarized in that decision as follows:

1. This is an unfair labour practice complaint that raises a number of novel and difficult issues. Some of those issues involve the application of new legislation that was passed in 1993. Others involve longstanding provisions of the *Labour Relations Act* which the applicant seeks to apply

to a rather special commercial context: professional sport. But in both cases, the principles that emerge may have application beyond the particular situation under review.

2. That situation is easy enough to describe, and to make this decision easier to read, we will refer to the parties in abbreviated form.

3. For many years the "American League", the "National League", and the "Umpires' Organization" have bargained together to settle the salaries and working conditions of professional umpires. This collective bargaining has taken place from time to time over at least the last 20 years, and has resulted in an agreement that is uniformly applied whenever and wherever umpires work in the United States and Canada. When umpires come to Toronto, as they have on a regular basis since 1977, they are paid in accordance with that agreement. Members of the Umpires' Organization are regularly and routinely working in Toronto, whenever the Blue Jays have a home game.

4. This year the Leagues and the Umpires' Organization are engaged in collective bargaining for a new collective agreement. That agreement, when concluded, will also apply in the United States and Canada. However, negotiations are at an impasse and, as a result, the Leagues have "locked out" the umpires at all locations at which they would customarily work, including the Skydome in Toronto.

5. The lock-out that was imposed by the Leagues is effective in Toronto. It is preventing umpires from working in Toronto as they normally would, and, as we understand it, there has been picketing in Toronto in connection with this collective bargaining dispute. The lock-out is a collective bargaining tactic. In order to put economic pressure on the umpires to agree to the Leagues' bargaining proposals, the Leagues have locked out the umpires and have also engaged "replacement umpires" to work in the United States and Canada where the locked out umpires normally work - including at the Skydome in Toronto.

6. It is common ground that: the Umpires' Organization is a "trade union" under United States law; any resulting agreement between the Leagues and the Umpires' Organization will be a "collective agreement" under American law; the parties intend to apply that "collective agreement" in Canada to "employees" who work in both the United States and Canada; and the lock-out has been imposed by the Leagues in respect of umpires in the United States and Canada.

7. The question is whether any of these employment relationships and collective bargaining activities are subject to Canadian law - which *may* mean *Ontario legislation* because, in Canada, employment and collective bargaining matters are largely subject to provincial regulation. The Umpires' Organization says that they are. The Leagues say that they are not.

8. The Leagues' primary submissions are that: the Umpires' Organization is not a "trade union" under Ontario law; the Umpires' Organization has no collective bargaining rights under Ontario law for umpires working in Ontario; there are no employment or collective bargaining relationships in Ontario to which the Ontario law could apply; the agreement that is struck in the United States is not a collective agreement under Ontario law; there is in fact no "lock-out" in Ontario at all to which the Ontario law can apply; and, of course, the new legislation barring replacement workers can have no application either.

9. Simply put, the Leagues maintain that the ongoing employment and collective bargaining relationships - including the lock-out - are American activities which may have commercial consequences in Ontario, but are in no way subject to Ontario collective bargaining law. The Leagues further argue that this and every other panel of the Board are prohibited from hearing this application because of a reasonable apprehension of bias, (stemming from a newspaper report, in which counsel for the Umpires' Organization is quoted as saying that some unknown person from the Labour Relations Board told him the statute applied to his situation). In the alternative, the Leagues maintain that if any Canadian law applies at all, it is the Federal Canada Labour Code. In the further alternative the Leagues submit that if Ontario law applies and there has been a breach of that law no remedy should be given.

15. Counsel for the NBA points to the phrase "as they have on a regular basis since 1977"

in paragraph 3 as indicative of a requirement that the NBA must operate in Ontario on a regular basis for an employment relationship, to which Ontario law applies, to exist. Counsel suggested that the NBA only occasionally and sporadically ventured into the Ontario jurisdiction and that this activity on the part of the NBA was insufficient for the Board to conclude that an employment relationship existed between the NBA and the NBRA in Ontario.

16. Even if I were to accept that there is some requirement that the NBA must play and must assign NBRA members to referee games on a “regular” basis in Ontario before an employment relationship can exist, on the facts of this case, there **have** been NBA games played on a regular basis in Ontario. There may not be many games, and the number of games played may be a minuscule portion of the total number of games played in the NBA, but that does not mean that games are not “regularly” played in Ontario. They may be infrequent, but since 1988, (other than in 1994 when many world championship basketball games were played and refereed by NBRA members) between one and four NBA exhibition games have been played in Ontario, in the month of October. This is indicative of a regular consistent pattern of activity. In my view it is not sporadic activity but regular, albeit infrequent, activity. I want to make it clear that in concluding that the NBA has employed members of the NBRA in Ontario on a regular basis I am not to be seen as accepting counsel for the responding party’s suggestion that it is necessary for the NBA to carry on business on a regular basis as a prerequisite to a finding that an employment relationship exists. For the purposes of this brief decision it is not necessary to decide this point. However, should further reasons issue, I may well provide a decision on this issue. Before leaving this point, I would observe parenthetically that sporadic employment in Ontario by individuals or companies based elsewhere is a routine phenomena in some industries - the construction industry in Ottawa/Hull for example. No one has ever suggested that those trade people are not employees when they work sporadically in construction sites in Ontario.

17. As in the *Umpires’* case, counsel for the NBA took the position that the Board did not have jurisdiction to deal with this case as it falls within the constitutional jurisdiction of the Federal government.

18. In the *Umpires’* case, the Board made the following findings, declarations and determinations:

13. Having regard to the evidence and representations of the parties, and the provisions of the *Labour Relations Act*, the Board makes the following findings, declarations and determinations:

1. There is no reasonable apprehension of bias respecting the Board as a whole or this particular panel which would preclude this panel or the Board as a whole from adjudicating the legal issues raised in this case, or from granting the remedies requested. There is no suggestion that this panel is biased in any way, nor is there any evidence that any member of the Board expressed any view to the applicant or its counsel. We put no weight on the quote in the newspaper.
2. The labour relations, collective bargaining, and alleged employment relationships that are the subject of this application are regulated provincially by the Ontario *Labour Relations Act*, and not federally by the Canada Labour Code.
3. The *Umpires’* Organization is a trade union within the meaning of the Ontario *Labour Relations Act*.
4. The umpires regularly and customarily work in Toronto at the Skydome and are “employees” within the meaning of the *Labour Relations Act* and, therefore, individuals to whom the statute applies.
5. The *Umpires’* Organization is entitled to represent these individuals in Ontario,



and the Umpires' Organization has bargaining rights for them in accordance with the *Labour Relations Act*.

6. The employer of these umpires is the American League and the National League of Professional Baseball Clubs *not* the Toronto Blue Jays Baseball Club.

7. The agreement negotiated between the Leagues and the Umpires' Organization is (or was) a collective agreement in accordance with the *Labour Relations Act*.

8. Any lock-out of umpires, at this time, in the Province of Ontario would be unlawful in Ontario because neither the Leagues nor the Umpires' Organization have triggered the compulsory conciliation process which is mandatory in this province before a lawful strike or lock-out can occur. Similarly, any strike of umpires in Ontario would be unlawful at this time. (See section 74 of the *Labour Relations Act*).

9. The engagement or employment of replacement umpires is likewise unlawful, being contrary to section 73.1 of the *Labour Relations Act*.

10. As we will discuss below, we are not persuaded that as a matter of discretion the Board should refuse to make any declaration or remedial direction respecting the ongoing collective bargaining activity, insofar as it occurs in and is regulated by Ontario law.

19. Having reached the factual conclusions as already set out, and in accordance with the Board's conclusions in the Umpires' case, which are directly applicable to the case before the Board, I hereby declare and direct as follows:

1. An employment relationship exists between the NBA and members of the NBRA when the NBA assigns referees to referee the games in Ontario. The NBA is an employer for the purposes of the *Labour Relations Act* and the referees are employees for the purposes of the Act.
2. The labour relations, collective bargaining, and alleged employment relationships that are the subject of this application are regulated provincially by the Ontario *Labour Relations Act*, and not federally by the Canada Labour Code.
3. The NBRA is a trade union within the meaning of the Ontario *Labour Relations Act*.
4. The NBA has voluntarily recognized the NBRA as the exclusive bargaining representative of all persons employed by the NBA as referees. By virtue of the recognition clause in the collective agreement and the conduct of the NBA in applying the terms and conditions of the collective agreement when referees are employed in Ontario, it has voluntarily recognized the NBRA as the representative of referees employed by the NBA in Ontario.
5. The NBRA is entitled to represent the persons referred to above in Ontario and the NBRA has bargaining rights for them in accordance with the *Labour Relations Act*.
6. Whether or not there are bargaining rights, the employees in question have been locked out within the meaning of section 74(2) of the

Act. The current lock-out of the referees in Ontario is unlawful as the parties have not undergone the mandatory conciliation processes provided for in the Act. Similarly, any strike of referees in Ontario would be unlawful at this time.

20. This brings me to the issue of discretion. Pursuant to section 95 of the Act after the Board has made an unlawful lock-out declaration it has the discretion not to order a remedy. In dealing with this issue in the Umpires' case the Board stated:

14. As we have indicated in the preceding paragraph, we are satisfied that the Ontario *Labour Relations Act* applies to the circumstances under review, that provisions of the Ontario *Labour Relations Act* have been contravened, and that a remedy should issue. However, we are more troubled by the Leagues' alternative submission that even if Ontario Law does apply and has been breached, no remedy should issue. There is considerable force to the Leagues' submission that the collective bargaining process (of which the "Toronto lock-out" is only a small part) is occurring lawfully in other jurisdictions, and that the application before us is an opportunistic attempt to gain a tactical advantage from local collective bargaining law, that no one has sought to apply in the past. But, by the same token, there has been no need for anyone to consider the application or Ontario law before, collective bargaining includes the use of the law for tactical advantage, and there are certainly instances where employers have sought the application of provincial law for *their* tactical advantage, and to the potential detriment of broader extra-provincial collective bargaining structures.

15. We are troubled that the situation in Ontario is only a small slice of the collective bargaining pie, that is largely driven and regulated by forces outside Ontario. But the fact is: it is not unusual for business activity to span several provinces, or exist between Canada and the United States, yet for constitutional reasons, collective bargaining in this country is largely a provincial responsibility - whatever detrimental effects that may have to broader based collective bargaining processes. Fragmented collective bargaining is a consequence of the Canadian constitution. Indeed, as counsel pointed out, Ontario Hydro is subdivided between Federal and Provincial jurisdiction with obvious consequences for collective bargaining that takes place wholly within Ontario; moreover, it is not at all unusual for the local branches of an economically integrated operation to have to comply with local provincial regulation for employment or other purposes. And even if federal law were to apply in this case (which we find that it does not) the Canadian facet of the industry would still be governed by much broader American-based collective bargaining imperatives.

16. Fragmentation is endemic in our constitutional scheme, and we do not think that the adverse collective bargaining consequences to broader based bargaining are sufficient, in themselves, to prompt the Board *as a matter of discretion* not to apply Ontario law to collective bargaining activity in Ontario. Notions of "comity" may make some sense between jurisdictions where the rights are generally congruent, but where there are different legal regimes (here in different countries) questions of "sovereignty" also come into play.

17. In any event, we do not think that we should decline to apply Ontario law simply because it is novel to do so, or because there may be collective bargaining consequences, or because one side may reap a temporary tactical advantage - any more than we would be inclined to exempt a local branch plant from the application of Ontario law where the same arguments might be made. It may be that the inability to strike, lock-out, or use replacement umpires in Ontario at this time has an effect on the ongoing collective bargaining, or introduces a new "wrinkle" into the collective bargaining process. However, we see no obvious reason why this should be an impediment to settlement, nor should it create an obstacle that cannot be overcome by bargaining in good faith - an obligation that the parties have in all jurisdictions. Certainly it is no reason not to apply the law at all.

18. There is however, a question of *how* to apply the Ontario law in this particular case, so as not to *unnecessarily* cause collective bargaining difficulties or commercial consequences - where, as here, it can be fairly said that none of the parties have had much of an opportunity to consider the application of Ontario law, or seek compliance with it prior to the commencement of

this proceeding. Until the filing of this proceeding on April 21, 1995, it was reasonable for the responding parties to expect that collective bargaining would proceed on the understandings that the parties have heretofore shared. With this in mind, we think that it is reasonable at this stage to merely make declarations of rights, *which will be effective as at the conclusion of the baseball game currently scheduled for May 3, 1995*. This will give the parties an opportunity to consider their legal and collective bargaining positions prior to the Blue Jays return to Toronto later in May.

21. The Board's observations in the Umpires' case are equally applicable to the instant case and I share the concerns and views as expressed therein. However, I am also of the view that it is appropriate to apply the Ontario legislation in the case before me. While clearly it will be an anomaly for the NBRA referees to only work in Ontario, it is not clear that either side will gain a tactical advantage in the collective bargaining negotiations and, if they do, that is part of the labour relations dynamics in a case of this nature. Until the conciliation process is complied with, the referees cannot legally strike and the NBA cannot legally lock them out. If either party so chooses to initiate it, the conciliation process can be completed within a short time frame and the anomalous situation in Ontario ended. I am not convinced that either party will be so prejudiced in this case that I should decline to order any remedies.

22. Accordingly, I reiterate:

- a) the lock-out of the referees by the NBA in Ontario is illegal.
- b) until the conciliation processes are complied with the NBA must assign members of the NBRA to NBA games played in Ontario.

23. To provide the NBA with an opportunity to assign referees to the games played in Ontario the above declarations and rights shall not be in effect until Tuesday, November 14, 1995.

24. No other remedial directions are appropriate.

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**2504-95-R** United Food and Commercial Workers International Union, AFL, CIO, CLC, Applicant v. 570466 Ontario Ltd., c.o.b. as **Niagara Poultry Services**, Responding Party

**Certification - Employer operating chicken catching service out of owner's home and employing 25 persons as chicken catchers - Board finding employees to be employed in agriculture - Application dismissed**

**BEFORE:** *Gail Misra*, Vice-Chair, and Board Members *J. A. Rundle* and *P. V. Grasso*.

**APPEARANCES:** *Larry J. Fisher*, *Shawn Haggerty* and *Billy Krieger* for the applicant; *Barry Adams* and *Lou Nieuwland* for the responding party.

**DECISION OF THE BOARD;** November 8, 1995

1. The name of the responding party is amended to read: "570466 Ontario Ltd., c.o.b. as Niagara Poultry Services".



2. This is an application for certification in which the parties have reached agreement on all matters except one and requested that the Board convene a hearing to address that matter. The responding party claims the bargaining unit proposed is comprised of persons employed in the agricultural sector. The applicant is seeking a bargaining unit comprised of all employees of the responding party, with some exceptions, and it is of the view that the employees in question are not agricultural workers. The Board heard the parties' argument regarding this issue on October 30, 1995.

### **THE FACTS**

3. The parties agreed upon the facts and to the extent that we have relied on those facts in reaching our decision, they are outlined below.

4. 570466 Ontario Ltd. ("Niagara Poultry") came into existence in 1983. The two principals of the company are Mr. and Mrs. Nieuwland. Mr. Nieuwland has a background in farming. In 1979 he began to work at Port Colborne Poultry where he is presently employed in a part-time capacity as the Procurement Manager. Port Colborne Poultry is an industrial poultry processor which is organized by the applicant trade union. In addition to operating Niagara Poultry and his employment at Port Colborne Poultry, Mr. Nieuwland owns and operates a golf course and runs a tender fruit farm.

5. Niagara Poultry is a chicken catching service which is operated out of Mr. Nieuwland's home. Ninety per cent of the chicken catching work done by Niagara Poultry is for Port Colborne Poultry, while the remaining ten per cent of chicken catching is done for Cuddy Chicks Ltd. and for L & B Poultry, two other chicken processors. The responding party employs about 25 persons as chicken catchers. Three Niagara Poultry vans pick up employees at their homes or at a central location before midnight every night. The employees, working in crews, are taken to any one of a dozen farms with which the chicken processors have contracts. At the farm, the processor has its live-haul trailer present and the farmer identifies which floor of chickens is ready to be shipped out. Five Niagara Poultry employees go into the barn and begin to catch the chickens by their legs in groups of eight to ten at a time. Dead birds are the farmers' responsibility, and are not removed by the catchers. The groups of caught chickens are taken to the door of the barn where they are handed to another person, usually a Niagara Poultry employee, who "runs" them to the trailer where the chickens are loaded into holding crates by the tractor trailer driver. The drivers of the live haul trailers are provided by the processor, not by Niagara Poultry (and if they come from Port Colborne Poultry, they are members of the applicant trade union). Twelve to 14 chickens are loaded into each holding crate; holding crates are stacked in the trailer, and each truck load carries between 7,200 and 8,400 birds. It takes the crew about four hours to retrieve 15,000 chickens, for two loads. Drivers never enter the barns. Niagara Poultry staff work catching chickens at seven farms per week for Port Colborne Poultry alone.

6. Chicken catcher crews are remunerated on the basis of each 1000 chickens gathered and delivered to the processor unbruised, not moribund and alive. Since the live haul trailer drivers receive bonuses based on the number of live chickens delivered, they have an interest in ensuring that the chickens are caught and crated without undue roughness or stress to the chickens. Live haul drivers are also paid on the basis of how many trips they make. It is therefore in their interest to assist in the loading of the chickens so that the load is completed faster.

7. Farmers can catch their own chickens. However, since the processors offer the chicken catching as a service to make the processor's bid more competitive, the farmers tend not to do the catching themselves. Niagara Poultry does offer farmers vaccination services for the chickens when there are outbreaks of Laryngo. It may offer to clean out a barn when all of the birds die in a barn

and the birds must be removed. For the chicken processors, Niagara Poultry offers a chicken checking service pursuant to which a Niagara Poultry employee attends at a farm three or four days before a potential harvesting of the chickens to ensure the chickens have reached the processor's required weight.

8. The applicant union argued that the chicken catching service is simply an extension of Port Colborne Poultry work, and therefore is industrial rather than agricultural in nature. In support of this position, the applicant pointed to the fact that the Niagara Poultry vans are parked at the Port Colborne Poultry facility; potential employees can get Niagara Poultry application forms for employment at Port Colborne Poultry; employees can pick up their pay cheques at Port Colborne Poultry; and, Mr. Nieuwland has an office at Port Colborne Poultry.

9. The responding party posits that employee pay cheques can be picked up at Port Colborne Poultry because Mr. Nieuwland works there half days on Friday mornings, so it may be a convenient location for employees of Niagara Poultry to pick up their respective cheques. Pay cheques are generally sent out on Thursday nights with the lead hands to be handed out to those who are working, and can also be picked up at Mr. Nieuwland's home. Mr. Nieuwland has an office at Port Colborne Poultry as a consequence of his employment there. The Niagara Poultry vans are parked at Port Colborne Poultry for security reasons: they used to be kept at Mr. Nieuwland's golf course, but gasoline was being siphoned out of the tanks at that unsecured location, so the vans are now kept at the Port Colborne Poultry facility. The vans have also been kept at Mr. Nieuwland's home on occasion.

### **ARGUMENTS**

10. The responding party argues that the chicken catching work is simply a harvesting function, integral to the growing of the chickens on the farm. These employees do work which is similar to those who pick tender fruit or tobacco, which labour is often also supplied through an agency. The chicken handling, it is suggested, is a necessary and integral part of the raising of chickens on a farm, a clearly agricultural endeavour. Since it is indisputable that a poultry farm is an agricultural operation, catching the chickens in the barn of the farm is also said to be an integral part of that agricultural operation.

11. In addition, the responding party argues that nothing can be drawn from Niagara Poultry's apparent connections with Port Colborne Poultry. Those connections are conveniences which have been arranged as a result of Mr. Nieuwland's employment at that processor. The responding party points out that there are no connections with the other two processors who are Niagara Poultry customers, so it argues the Board should focus on whether the chicken catching, in and of itself, is part of the agricultural endeavour.

12. The applicant union argues that the whole operation of raising the chickens and their removal are all part of the Port Colborne Poultry enterprise, so it is more akin to an industrial enterprise than to an agricultural one. The union points out that the farmers concerned sign agreements with this processor to get the chicks from Port Colborne Poultry, they agree to raise the chickens to a size determined by the processor, and then the processor pays to have the chickens caught and loaded into the processor's trucks for transportation to the processing plant. The union relies on the fact that Mr. Nieuwland works for Port Colborne Poultry, has an office there, and gets paid for the catching work by this processor. The catchers can seek employment applications at the processing plant and can pick up their paycheques at the processor's facility. The vans which transport the catchers are stored at the Port Colborne Poultry facility.

13. The union argues that since the chicken catchers do nothing that is part of the farming



process, they should be treated like the live haul drivers, who also go to the farms and handle the chickens, and, are unionized.

14. In response to the applicant's arguments the responding party argues that the applicant's reliance on the relationship between Mr. Nieuwland and Port Colborne Poultry is misplaced. Mr. Nieuwland and his company have no connections to Cuddy Chicks Ltd. and L & B Poultry, the other two major customers of Niagara Poultry. It is common ground that there is a long enduring practice of food processors having contracts with farmers for the supply of fruit, vegetables or live stock, so the responding party suggests it cannot be argued that the whole process is industrial in nature. The responding party posits that the only issue for the Board to decide is where the line between the agricultural operation and the industrial operation lies. It argues that chicken catching, which is essentially a harvesting function, is integral to the poultry operation and is agricultural because it is work done in the barn to remove the chickens when they are full grown and ready for shipment. There is no argument that the transportation of live stock to the processor is not agricultural in nature.

### DECISION

15. The relevant portion of section 2 of the *Labour Relations Act* states as follows:

2. (1) This Act does not apply,

• • •

(b) to a person employed in agriculture, hunting or trapping;

• • •

Although the applicant would have been in a position to argue that the employees it is seeking to represent fall under the auspices of the *Agricultural Labour Relations Act*, it specifically chose not to make that argument. Therefore, this panel has only considered whether the employees in question are persons employed in agriculture or not.

16. The applicant relied on the Board's decision in *Sunnylea Foods Limited*, [1980] OLRB Rep. April 530, for the proposition that "when a company prepares farm products for market, not as an integrated part of a farming operation, but as a separate commercial operation, then the employees involved are not persons employed in agriculture" (at p. 531). While the Board has taken this view in defining where the line may be drawn between an agricultural and an industrial enterprise, it is important to consider the facts in *Sunnylea*. In that case the Board was asked to certify the union as the bargaining agent for employees of an egg grading station. Trucks transported the eggs from various farms in the area to the egg grading station where workers washed, candled, graded and packed the eggs, before the eggs were transported out to the company's customers. The Board found the workers were not agricultural workers because the egg grading operation was not integral to the farming operation, but was a separate commercial operation involved in the preparation and delivery of eggs to the market. That case is of little assistance to us because unlike the case before us, *Sunnylea* dealt with an agricultural product which had already been harvested and shipped to a location away from the farm. The Niagara Poultry employees work in the barns at the farms themselves, actually catching the chickens which have been raised in the barn, and then assisting in loading the caught chickens for transportation to the processor.

17. The Board in *Sunnylea* quoted from another Board decision, *Federal Farms*, 63 CLLC Para. 16,293, wherein the Board commented as follows:



... In our opinion the growing and harvesting of the vegetable produce on the farm and the preparation of the produce for market in the plant are readily divisible. ...

We agree with the panel in that case and are of the view that the growing and harvesting of chickens on the farm are integral to the agricultural enterprise, and, are clearly separate functions from the transportation and later processing of the chickens in preparation for sale to the consumer market.

18. None of the cases provided to us by the parties were precisely on point. However, the cases provided by the responding party generally supported the proposition that where the work performed was integral to the farm operation, it would be considered agricultural in nature. If, however, the employer's business was clearly separate, severable and ancillary to the farming operation, then it may not be characterized as agricultural (see *Wellington Mushroom Farm*, [1980] OLRB Rep. May 813, at p. 819). While it may be argued by the applicant that Niagara Poultry is indeed a separate business, it is clear that it is a business designed to assist the farmer and the processor in the "harvesting" of the grown chickens. It is done on the farm, in the barn where the chickens are raised, and but for the chicken catching activity, the chickens would not get from the farm to any other destination. In that respect the services provided by Niagara Poultry are not different than an employment agency which supplies fruit or tobacco pickers during the harvest season to those farmers who seek assistance in bringing in the harvest.

19. In *Spruceleigh Farms, A Division of Canada Packers Limited*, [1972] OLRB Rep. Oct. 860, the Board stated that "the breeding, hatching and growing operations ... are all part of the life cycle of a chicken and each forms an integral part of the operation of raising chickens". The Board specifically found that the growing of chickens was part of the business of agriculture within the meaning of section 2(b) of the Act. We have no doubt that harvesting is the natural extension of the process of the growing of the chickens, and is integral to the agricultural operation.

20. Since livestock operations have been subsumed under the rubric of agriculture, we are therefore satisfied that the employees of Niagara Poultry are employed in agriculture, and that the responding party is engaged in an agricultural endeavour.

21. Since the *Labour Relations Act* excludes from its application persons employed in agriculture, the employees whom the applicant seeks to represent do not have the right to bargain collectively within the framework of this statute. Accordingly, and for the above reasons, this certification application is dismissed.

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**0247-95-R Canadian Union of Public Employees (Local 139), Applicant v. North Bay General Hospital, Responding Party v. Service Employees International Union, L. 478, Intervenor**

**Bargaining Unit - Sale of a Business - Parties agreeing that merger of North Bay Civic Hospital ("Civic") and St. Joseph's General Hospital ("St. Jo's") to form North Bay General Hospital amounting to sale of a business and that employees intermingled - CUPE representing employees in "all-employee" bargaining unit at the Civic - SEIU representing employees in three bargaining units at St. Jo's - Parties agreeing to determine representation issue on basis of representation vote, but not agreeing on whether to create one or two bargaining units - Board directing vote in single broadly-based unit**

**BEFORE:** *Janice Johnston*, Vice-Chair.

**APPEARANCES:** *Geoffrey M. Laplante, Geric LaFontaine and Jack Mayer* for the applicant; *Brian R. Gatién, Robert McGrath, Monique Menard and Linda McCarthy* for the responding party; *Sean Fitzpatrick, Andrew MacKenzie, Marry Perrault and Roger Lamothe* for the intervenor.

**DECISION OF THE BOARD;** November 1, 1995

1. This is an application pursuant to section 64 of the *Labour Relations Act* (the "Act").
2. Effective April 1, 1995 the North Bay Civic Hospital (the "Civic") and St. Joseph's General Hospital (the "General") of North Bay were merged together to form the responding party, the North Bay General Hospital (the "employer"). The applicant, the Canadian Union of Public Employees Local 139 ("CUPE") represents approximately 275 workers at the Civic in an "all-employee" bargaining unit. This unit includes office and clerical workers, service workers and nursing staff amongst others. The intervenor, the Service Employees International Union, Local 478 ("SEIU") represents approximately 185 employees at the General in three bargaining units. There is a full-time service unit, a part-time service unit and an office and clerical unit which includes full-time and part-time workers.
3. The parties were able to reach agreement on all issues except one. They signed the following Minutes of Settlement:

**MEMORANDUM OF AGREEMENT**

**B E T W E E N:**

Service Employees International Union, Local 478

("Union")

- and -

Canadian Union of Public Employees (Local 139)

("Union")

- and -

North Bay General Hospital

("Employer")

In the matter of Board file no. 0247-95-R, the parties agree as follows:

1. The parties agree to the following:
  - a. there has been a sale of a business (or sale of businesses) within the meaning of s.64 of the Act;
  - b. there has been an intermingling of employees within the meaning of s.64(6) of the Act;
  - c. the Board will conduct a vote or votes where employees will be asked to choose between the two Unions;
  - d. the Board will decide whether to conduct one vote for a single all employee bargaining unit or to conduct two votes for two bargaining units: an office and clerical unit and a service unit;
  - e. regardless of the outcome of the vote, the seniority lists of the two Unions will be dovetailed in the new bargaining unit or units;
  - f. the vote will be held as quickly as possible after the Board decision is issued;
  - g. the employees in the St. Joseph's Treatment Centre and the Nipissing Detoxification Centre covered by the OLRB certificates dated 11 March 1991 and 6 November 1993 respectively will not be affected by the vote or votes, will not be affected by the dovetailing of seniority lists, will maintain their separate collective agreements and will continue to be represented by the Service Employees International Union, Local 478.
2. The voting constituency or constituencies for the above-noted vote or votes shall be as described in Schedule "A" to this Memorandum. The parties agree that the persons listed in Schedule B are not entitled to vote for the purposes of this Application.
3.
  - a. Following the issuance by the Board of a final outcome in the above-noted vote or votes, the winning Union or Unions shall meet with the Employer to discuss the disputed classifications listed in Schedule B.
  - b. In the event that a winning Union and the Employer cannot reach agreement on the disputed classifications listed in Schedule B, either party may submit the issue to arbitration or the Labour Board for final resolution.
  - c. The parties agree to amend their recognition clause(s) in accordance with any agreements or decisions reached pursuant to paragraph 3.

Dated this 12th day of October 1995 in the City of North Bay.

\_\_\_\_\_  
"Anita Bouvier"  
Service Employees International  
Union, Local 478

\_\_\_\_\_  
"Robert F. McGrath"  
North Bay Hospital

\_\_\_\_\_  
"D. Ivanochko"  
Canadian Union of Public Employees  
(Local 139)



**SCHEDULE "A"**

**One bargaining unit/voting constituency:**

All employees of North Bay General Hospital, in the City of North Bay, save and except

professional medical staff,  
graduate nursing staff,  
undergraduate nursing staff,  
graduate pharmacists,  
undergraduate pharmacists,  
graduate dieticians,  
student dieticians,

supervisors,  
persons above the rank of supervisor,

technical personnel,  
secretary to the President/C.E.O.,  
secretary to the Vice-President of Human Resources,  
secretary to the Vice-President of Finance,  
secretary to the Vice-President of Operations,  
secretary to the Vice-President of Patient Services,

Human Resources Assistant

secretary to the Director of Occupational Health,

employees of the Nipissing Detoxification Centre and St. Joseph's Treatment Centre  
covered by the OLRB certificates dated 11/3/91 and 6/11/93

and persons covered by subsisting collective agreements.

Clarity note #1

The parties agree that new or changed positions of a managerial or confidential nature may be referred to the Board under the Act and agree to be bound by the Board's decision.

Clarity note #2

For the purposes of clarity, the following positions are not included in the "technical personnel" exclusion: recreational therapists and rehabilitation assistants (physiotherapy assistants, speech pathologists assistant, occupational therapist assistants), and are to be covered by the scope clause.

**Two bargaining units/voting constituencies:****A.**

All office and clerical employees of North Bay General Hospital, in the City of North Bay, save and except

secretary to the President/C.E.O.,  
secretary to the Vice-President of Human Resources,  
secretary to the Vice-President of Finance,  
secretary to the Vice-President of Operations,  
secretary to the Vice-President of Patient Services,  
Human Resources Assistant,  
secretary to the Director of Occupational Health,

technical personnel

supervisors and  
persons above the rank of supervisor and persons covered by subsisting collective agreements.

Clarity notes: 1) as above  
2) as above

**B.**

All employees of North Bay General Hospital, in the City of North Bay, save and except

office and clerical employees,  
professional medical staff,  
graduate nursing staff,  
undergraduate nursing staff,  
graduate pharmacists,  
undergraduate pharmacists,  
graduate dieticians,  
student dieticians,

supervisors,  
persons above the rank of supervisor,

technical personnel,

secretary to the President/C.E.O.,  
secretary to the Vice-President of Human Resources,  
secretary to the Vice-President of Finance,  
secretary to the Vice-President of Operations,  
secretary to the Vice-President of Patient Services,  
Human Resources Assistant,  
secretary to the Director of Occupational Health,

employees of the Nipissing Detoxification Centre and St. Joseph's Treatment Centre covered by the OLRB certificates dated 11/3/91 and 6/11/93 respectively and persons covered by subsisting collective agreements.

Clarity note 1 as above

Clarity note 2

For the purposes of clarity, the following positions are not included in the "technical personnel" exclusion: recreational therapists and rehabilitation assistants (physiotherapy assistants, speech

pathologists assistant, occupational therapist assistants), and are to be covered by the scope clause.

SCHEDULE "B"

1. Buyer - Materials Management - G. Mountain
2. Accident Prevention Officer - Occupational Health and Safety Services - N. Smith
3. Financial Analyst - Finance - L. Gravelle
4. Civil Technologist - Engineering Services - B. Pinder
5. Clinical Ancillary Analyst - Information Systems - R. Kovacs
6. Financial Analyst - Information Systems - C. McGrath
7. Computer Support Specialist II (Applications) - Information Systems - Vacant
8. Computer Support Specialist II (Technical - Information Systems - K. Peplinski
9. Computer Support Specialist III (Technical) - Information Systems - R. Laing
10. Costing Coordinator - Case Costing - A. Brunette
11. Health Records Administrator, Coding & Quality Improvement - Clinical Records - Dube
12. Health Records Administrator, utilization Management/Data Analyst - Clinical Records - S. Fortin
13. Secretary - Quality Improvement - S. Simard
14. Secretary, Director Clinical Coordination - Patient Services - S. King
15. Secretary, Director Transition - Patient Services - S. Allen
16. HRIS Coordinator - J. Lecuyer
17. Staffing Coordinator - D. Hogan
18. Benefits Administrator - E. Mann
19. Benefits Administrator - Vacant
20. Receptionist - G. Tamdeau
21. Secretary to Staffing Coordinator - M. Bennett
22. Payroll Clerk (McLaren site payroll) - Vacant

4. The only issue in dispute therefore, is the appropriate bargaining unit description. At the hearing scheduled for this matter the parties indicated that there were no factual disputes and proceeded directly to submissions. At the outset, counsel on behalf of the responding party indicated that the employer wished to remain neutral on the issue of bargaining unit configuration.

5. SEIU argued that there should be two bargaining units. One for full-time and part-time service workers and one for part-time and full-time office and clerical workers. Counsel argued that this bargaining unit configuration was appropriate. He pointed out that it reflects the history



of bargaining at the General and is also reflective of the employee preference at the General. In his view, there are no issues of viability or stability in this case as both CUPE and SEIU have a lengthy history at their respective locations and the employer has not expressed any concerns with regard to either of the two options being proposed concerning the appropriate bargaining unit structure.

6. Counsel on behalf of CUPE agreed that the Board should give a great deal of weight to employee preference. However, he argued that the employees who CUPE represents want to continue in an all employee unit and do not want to split up the office and clerical workers and the service workers into two separate units. If the Board finds that two bargaining units are appropriate and directs a vote on that basis, counsel argued that it would be effectively splitting the unit without giving the employees any choice in the matter. Counsel suggested that it is in the interests of the employees and that it makes labour relations sense to maintain one strong bargaining unit.

7. Section 64(1) of the Act provides, in part, as follows:

**64.(1)** In this section,

“business” includes one or more parts of a business; (“entreprise”)

“predecessor employer” means an employer who sells his, her or its business; (“employeur précédent”)

“sells” includes leases, transfers and any other manner of disposition; (“vend”)

“successor employer” means an employer to whom the predecessor employer sells the business. (“employeur qui succède”)

(1.1) This section applies when a predecessor employer sells a business to a successor employer.

(2) If the predecessor employer is bound by a collective agreement, the successor employer is bound by it as if the successor employer were the predecessor employer, until the Board declares otherwise.

(2.1) If the predecessor employer is a party to any of the following proceedings, the successor employer is a party to the proceeding as if the successor employer were the predecessor employer, until the Board declares otherwise:

1. A proceeding before the Board under any Act.
2. A proceeding before another person or body under this Act, the *Hospital Labour Disputes Arbitration Act*, the *Crown Employees Collective Bargaining Act, 1993* or the *Agricultural Labour Relations Act, 1994*.
3. A proceeding before the Board or another person or body relating to the collective agreement.

(2.2) If the predecessor employer has given or been given a notice relating to bargaining for a collective agreement or has requested the appointment of a conciliation officer or mediator, the successor employer is considered to have given or been given the notice or to have made the request, until the Board declares otherwise.

(3) If, when the predecessor employer sells the business, a trade union is the bargaining agent for any employees of the predecessor employer, has applied to become their bargaining agent or is attempting to persuade the employees to join the trade union, the trade union continues in the same position in respect of the business as if the successor employer were the predecessor employer.

(4) An interested person, trade union or council of trade unions may apply to the Board to determine,

- (a) a question concerning the scope of bargaining rights of the trade union referred to in subsection (3); or
- (b) a conflict in the bargaining rights of the trade union referred to in subsection (3) and another trade union representing employees of the successor employer.

(4.1) On an application under clause (4)(a), the Board may alter the composition of the bargaining unit for which the trade union referred to in subsection (3) holds bargaining rights.

(4.2) On an application under clause (4)(b), the Board may alter the description of a bargaining unit in a certificate issued to any trade union or the definition of a bargaining unit in a collective agreement.

(5) An interested person, trade union or council of trade unions may apply to the Board within sixty days after the predecessor employer sells the business for the termination of the bargaining rights of the trade union referred to in subsection (3).

(5.1) On an application under subsection (5), the Board may terminate the bargaining rights of the trade union only if it considers that the successor employer has changed the character of the business so that it is substantially different from the business of the predecessor employer.

(6) This subsection applies if the successor employer carries on one or more other businesses and the successor employer intermingles the employees of the business sold to him, her or it with those of another business. On application, the Board may,

- (a) declare that the successor employer is no longer bound by the collective agreement to which the predecessor employer was bound;
- (b) determine the unit or units of employees that are appropriate for collective bargaining;
- (c) declare which trade union or council of trade unions, if any, becomes the bargaining agent for the employees in each of the bargaining units;
- (d) amend, to the extent the Board considers necessary, any certificate issued to a trade union or council of trade unions or any bargaining unit defined in any collective agreement; and
- (e) define or redefine the seniority rights under any collective agreement of the employees concerned.

(7) Where a trade union or council of trade unions is declared to be the bargaining agent under clause (6)(c) and it is not already bound by a collective agreement with the successor employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 14.

(8) Before disposing of any application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

8. There is extensive Board jurisprudence on the issue of appropriate bargaining unit configuration. This issue is dealt with in the context of applications for certification, applications to combine bargaining units, and, as in the case at hand, applications to determine if there has been a sale of a business. As was pointed out by counsel, due to the circumstances in this case, the Board need not consider issues such as: the access of employees to collective bargaining; the stability and

viability of the proposed bargaining unit structure; and the community of interest amongst the various employees. Both counsel argued that the employees their clients represent, preferred to maintain the existing structure as they know it. Therefore “employee preference” as it has been expressed in the unique facts of this case, is of little assistance to the Board. It is impossible to give weight to this factor when there are competing views and they, in effect, cancel each other out.

9. Therefore, I am left with a choice between two long-time viable bargaining structures. In determining an appropriate bargaining unit configuration the Board has historically given preference to broader based bargaining units. In *Bestview Holdings*, [1983] OLRB Rep. Aug. 1250, the Board stated:

28. Self-determination and community of interest often favour relatively small units, but these are not the only relevant factors in bargaining unit design. The Board must also strive to create a viable structure for ongoing collective bargaining and, to this end, undue fragmentation must be avoided. Consolidated bargaining offers several advantages over a fragmented structure. A proliferation of small units may result in unnecessary work stoppages. Each time one group goes on strike, other employees performing jobs that are functionally dependent upon the work normally done by strikers are brought to a halt. Even in the absence of functional integration, strikers may erect picket lines that keep other employees away from work. The likelihood of strike occurring increases as the number of rounds of bargaining grows, and is further enhanced by competition among bargaining agents. Secondly, each of several units typically becomes a separate seniority district, enclosed by walls which impede the movement of employees between jobs. In addition, broader-based structures may lower the cost and thereby increase the availability of insurance schemes and benefit plans. A multiplicity of bargaining units also inevitably spawns jurisdictional disputes over the assignment of work and entails the cost of negotiating and applying several collective agreements. Finally, the existence of a single bargaining unit facilitates equitable treatment of employees doing similar jobs.

10. In *Stratford General Hospital*, [1976] OLRB Rep. Sept. 459, the Board observed:

Even where the Board has found that two competing applications propose appropriate bargaining units, it has exercised a discretion in favour of the more comprehensive bargaining unit in finding “the” appropriate bargaining unit for the purposes of section 6(1)... Surely where there are competing applications, the Board can be more concerned with the ideal characteristics of collective bargaining structures in that, whatever the decision, employees will not be denied access to the collective bargaining process.

11. It is also of assistance to note that in *Salvation Army*, [1994] OLRB Rep. Jan. 85 in addressing the issue of appropriate bargaining unit structure in the context of an application for certification the Board stated:

19. Both in *Hospital for Sick Children* and in later cases, the Board has explored the tension between bargaining structures that facilitate organizing (one of the goals of the Statute), and bargaining structures that are likely to be more stable and effective in the long-run (another goal of the Act). The former objective points to smaller employee groupings which are more readily organized. The latter goal points to broader-based bargaining units that have the organizational mass and bargaining power to survive over time and in changing market conditions.

20. These goals must be harmonized within a framework that now recognizes that there is no single unique and indisputably “appropriate” unit. There are degrees of appropriateness; or to put the matter another way, sensible, alternative ways in which one can define the bargaining unit without triggering (as the Board in *Hospital for Sick Children* put it) “serious labour relations problems”. A trade union need not seek to represent the *most* comprehensive or *most appropriate* bargaining unit; and as the applicant or moving party, the union has a degree of flexibility in deciding what unit to organize. As long as the unit it seeks does not generate serious labour relations difficulties for the employer, it will be granted the unit it applies for.

21. If there is one theme that has been constant in the Board’s concerns, both before and after



*Hospital for Sick Children*, it is the aversion to fragmentation: the sub-division of an employer's enterprise into a number of separate collective bargaining components - which become separate seniority districts, which can lead to jurisdiction or inter-employee rivalries, which can generate organizational problems if one or other fragment goes on strike, which can make work-sharing or technological change more difficult to accommodate, and so on. Accordingly, while smaller sub-divisions may be appropriate in the context of a particular case, and may be necessary to facilitate organizing (despite the collective bargaining "downside" described above), a broader, more comprehensive unit will *also* generally be appropriate. In other words, if a trade union seeks a *more* comprehensive bargaining unit, this larger unit will usually be appropriate, and will very likely be accepted on the *Hospital for Sick Children* test, unless there are serious labour relations problems with it which *demonstrably* overwhelm the difficulties associated with fragmentation, or unless the larger unit applied for seems idiosyncratic or perverse. Indeed, unless the labour relations context is quite unusual, one would expect the more comprehensive bargaining unit to be presumptively appropriate, if that is what the union has organized and applied for; and it serves no purpose to engage in the exercise mentioned in the emphasized portion of the *Hospital for Sick Children* case reproduced at paragraph 18.

12. Accordingly, for all of the reasons noted in the jurisprudence it is appropriate to give preference to the broader based unit. Therefore, pursuant to section 64(6) of the Act, I conclude that the appropriate bargaining unit configuration is that proposed by CUPE and set out as the first option in Schedule "A" to the Memorandum of Agreement.

13. In accordance with the agreement of the parties therefore the Board makes the following declarations and directions:

- 1) A sale of a business (or businesses) within the meaning of section 64 of the Act has occurred;
- 2) There has been an intermingling of employees within the meaning of section 64(6) of the Act;
- 3) A representation vote will be conducted to determine which union shall represent the employees of the employer in the following bargaining unit:

All employees of North Bay General Hospital, in the City of North Bay, save and except

professional medical staff,  
graduate nursing staff,  
undergraduate nursing staff,  
graduate pharmacists,  
undergraduate pharmacists,  
graduate dieticians,  
student dieticians,

supervisors,  
persons above the rank of supervisor,

technical personnel,

secretary to the President/C.E.O.,  
secretary to the Vice-President of Human Resources,  
secretary to the Vice-President of Finance,  
secretary to the Vice-President of Operations,  
secretary to the Vice-President of Patient Services,  
Human Resources Assistant secretary to the Director of Occupational Health,

employees of the Nipissing Detoxification Centre and St. Joseph's Treatment Centre covered by the OLRB certificates dated 11/3/91 and 6/11/93

and persons covered by subsisting collective agreements.

Clarity note #1

The parties agree that new or changed positions of a managerial or confidential nature may be referred to the Board under the Act and agree to be bound by the Board's decision.

Clarity note #2

For the purposes of clarity, the following positions are not included in the "technical personnel" exclusion: recreational therapists and rehabilitation assistants (physiotherapy assistants, speech pathologists assistant, occupational therapist assistants), and are to be covered by the scope clause.

- 4) The voting constituency shall consist of all employees of the employer who fall in the bargaining unit set out above who are employed as of October 12, 1995 and who continue to be so employed on the day of the vote.
- 5) Regardless of the outcome of the vote the seniority lists of the two unions will be dovetailed in the new bargaining unit.

14. This matter is referred to the Manager of Field Services for the purpose of appointing a Labour Relations Officer to prepare a voters' list and conduct the vote. For the purposes of the voters' list, I note that the parties have agreed that certain persons listed in Schedule "B" to the Memorandum of Agreement are not entitled to cast a ballot.

15. In the event that there are any difficulties in implementing this decision, I shall remain seized.

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**1977-95-R; 2241-95-R; 2242-95-R; 2414-95-R** United Food and Commercial Workers International Union, Local 175, Applicant v. **S & R Car Rentals Toronto (Central) Ltd.**, Responding Party; United Food and Commercial Workers International Union, Local 175, Applicant v. **S & R Car and Truck Rentals Ltd. Toronto (Central)**, Responding Party

**Certification - Change in Working Conditions - Employer asserting that various certification applications should be dismissed with a bar on basis of employer theory that union improperly using statutory freeze as organizing tool - Board not persuaded that bar appropriate - Union granted leave to withdraw two of the applications, Board dismissing third application and certificate issuing in respect of fourth application**

**BEFORE:** *S. Liang*, Vice-Chair, and Board Members *Orval R. McGuire* and *K. S. Brennan*.

**APPEARANCES:** *Kelvin Kucey*, *Mark Flannigan*, *Chris Scott*, *Phil Palahnuk* and *Abdi Dahir* for the applicant; *M. E. Geiger*, *June Hagen*, *Les Dickins* and *Barb Kirby* for the responding party.

**DECISION OF THE BOARD; November 27, 1995**

1. These matters are all applications for certification, brought by the same applicant with respect to various bargaining units of employees employed by S & R Car Rentals Toronto (Central) Ltd. (referred to herein as "S & R"). A hearing was originally scheduled into Board File No. 2414-95-R, the most recent application for certification. Since the issues raised in that Board file concerned the other three files, none of which had been disposed of by the time of this hearing, the parties agreed that this panel should hear and determine the outstanding issues relating to all of these applications. Since the hearing, the *Labour Relations and Employment Statute Law Amendment Act, 1995* has been enacted, bringing into force the *Labour Relations Act, 1995* ("the new Act"). The differences between the new Act and the "old" *Labour Relations Act* have no bearing on our determinations; references to statutory provisions in this decision are references to those as they existed before November 10, 1995.

2. To briefly summarize the status of these applications, Board File No. 1977-95-R is an application relating to all employees of S & R employed in Metropolitan Toronto, filed on August 21, 1995. Board File Nos. 2241-95-R and 2242-95-R, which were filed on September 12, 1995, relate to bargaining units of employees in the Towns of Oakville and Markham respectively. In its response to Board File No. 1977-95-R, the employer took the position that the appropriate bargaining unit should be described to include all employees employed in the greater Metropolitan Toronto area which would include the Municipalities of Peel, Markham, Oshawa and Metropolitan Toronto. On September 18th, the parties met and discussed these three applications. The parties agreed to adjourn all three of these applications, with the applicant undertaking to consider the appropriateness of the employer's proposed bargaining unit, which was described in the agreement as employees in the greater Metropolitan area, including Oakville, Milton, Vaughan and the Municipalities of Peel, Markham, Oshawa and Metropolitan Toronto. The employer agreed to provide the union with a list of the employees in its proposed bargaining unit, by September 21st. On September 22nd, the applicant sought leave to withdraw these three applications, and filed a new application, Board File No. 2414-95-R, which proposed a bargaining unit description which is identical to the one proposed by the employer on September 18th.

3. The parties have met with respect to Board File No. 2414-95-R. Based on the agreed bargaining unit, the parties understand that, subject to a further check of the membership evidence by the Board, the applicant is numerically in a position to receive a certificate. A hearing was scheduled in order to hear the evidence and submissions of the parties on certain issues raised by the employer, outlined below.

4. The employer takes the position that the Board ought not to allow the applicant to withdraw the applications in Board File Nos. 1977-95-R, 2241-95-R and 2242-95-R and that it ought to instead dismiss them and impose a bar on further applications by the applicant for a period of four months, based on the Board's powers under section 105(2)(i) of the *Labour Relations Act*. Assuming that the Board imposes such a bar, the result would be that Board File No. 2414-95-R could not proceed. In the alternative, if the Board chooses not to impose a bar, the employer requests that the Board conduct a representation vote in Board File No. 2414-95-R to dispel what it calls a "cloud" over the membership evidence filed by the applicant.

5. Section 105(2)(i) states that the Board has power

to bar an unsuccessful applicant for any period not exceeding ten months from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any



person or trade union representing the employees within any period not exceeding ten months from the date of the dismissal of the unsuccessful application.

6. In addition to these applications, there was a previous application (the “City Core application”), in which the union sought bargaining rights pertaining to certain downtown Toronto locations of the employer. This application was withdrawn by leave of the Board on August 10, 1995. The employer agreed to the withdrawal, which occurred after two days of evidence. The union undertook not to file a further application which related to a bargaining unit smaller than Metropolitan Toronto, and the employer agreed not to seek a bar to a further application.

7. In arguing that the Board ought to impose a bar to the current application, the employer states that in filing this series of applications, the union has sought to ensure that the company has been prevented, by the provisions of section 81 of the *Labour Relations Act* (“the statutory freeze”) from altering terms and conditions of employment and in particular from implementing wage changes. The union has used this freeze, it is submitted, as an organizing tool by conveying to employees that it is only through unionization that they will be able to achieve better terms and conditions of employment. The employer acknowledges that it has no direct evidence that this is the union’s organizing strategy, but states that it is the only logical inference from the sequence of events. As part of this theory, the employer asserts that it has been clear to the union from the beginning what the appropriate bargaining unit is, and that it could not be anything less than the one which the parties have now agreed to. The applications preceding the current one, therefore, have been nothing but shams, designed to impose a statutory freeze and pave the way to an organizing effort which culminated in the current application.

8. The employer outlined the facts on which it based its argument and the union agreed to virtually all of these. To the extent that there were some minor differences, they were of nuance only and not of any significance to our determinations. We assume for the purpose of this decision the accuracy of the facts as described by the employer.

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9. We are not persuaded that the facts support the inferences which the employer asks the Board to draw from them. We are not persuaded ultimately that there is any compelling reason to impose a bar to the current application before us, or to order a representation vote.

10. We find no evidence for the suggestion that the union has applied for bargaining units which it knew to be inappropriate, with the intention of imposing a freeze and ultimately withdrawing the applications. Firstly, there is every indication that the appropriate bargaining unit for this employer is an issue which has been both uncertain, and alive. To the extent that the employer asserts that a unit based on the greater Metropolitan Toronto area is the *only* appropriate unit, it is an issue which has never been litigated to its conclusion. When the employer agreed to the withdrawal of the union’s City Core application, it was aware that the union might well file an application based on *Metropolitan Toronto*, and not the *greater* Metropolitan Toronto area, based on its undertaking. The employer accepted this possibility and agreed to have the litigation of the bargaining unit issue discontinued.

11. Indeed, the union did what might have been expected, and followed through with applications which related to Metropolitan Toronto, complemented by two applications pertaining to municipalities outside of Metropolitan Toronto.

12. When it appeared that there was still disagreement about the bargaining unit, the employer and the union agreed to adjourn these three applications so that the union could consider

the appropriateness of the unit proposed by the employer. The employer also agreed to provide a list of the employees in its proposed unit to the union. It could hardly have come as a surprise that the union decided that it would agree to that unit. It was not an unreasonable response from the union to withdraw the three applications covering bargaining units which formed discrete parts of the unit now agreed to, and re-file an application for the broader unit. It is arguable that the union did not have to re-file a new application, but could have requested its membership evidence from the three applications to be consolidated into one of these three. Instead, it chose to start with a fresh application, which, besides ensuring that all of the membership evidence from the three applications could be taken into account, would also have ensured that all employees affected would have proper notice of the scope of the bargaining unit affected. We cannot conclude from its decision to choose this route, even taking into account all of the other facts relied upon by the employer here, that there was anything duplicitous or objectionable in the union's conduct.

13. Further, the employer bases its notion that the union *knew* that there was only one appropriate bargaining unit, on portions of the Board's decisions in *Budget Car Rental Toronto Limited*, Board File No. 0050-94-R and 0168-94-R, decision dated July 26, 1994 (unreported) and *Tilden Car Rental Inc.*, Board File No. 3963-93-R, decision dated May 16, 1994 (unreported). We have read those decisions and find them less than compelling as support for the proposition that, with respect to S & R, there is only one appropriate unit and that unit consists of the greater Metropolitan Toronto area.

14. We might also note that although the employer states that it has taken a consistent position throughout as to the scope of the appropriate bargaining unit, the one to which the parties have agreed currently makes reference explicitly to Oakville, Milton and Vaughan, which had not been referred to in the employer's responses previously.

15. With respect to the notion that the union sought to keep the employer in a state of "perpetual freeze" in order to assist its organizing efforts, the facts do not lead to this conclusion. First, if this had been the intention, the union would hardly have wished to withdraw its City Core application before the date on which it filed the Metropolitan Toronto application. In fact, there was a "gap" in the period of any statutory freeze between the dates that these two applications were alive.

16. Further, the employer has itself taken the position that the very changes to terms and conditions of employment that it alleges the union sought to freeze during its organizing drive, were not in any event prohibited by the provisions of section 81 of the Act. In its memorandum to employees of September 19th, the employer states that it has determined that it is legally entitled to implement its planned increases in wages and benefits, and that these would be implemented immediately.

17. As well, the employer's theory is that the union has used the lack of increases as a tool in its organizing campaign, representing to employees that it will only be through union representation that they will gain better terms and conditions of employment. Not only is there admittedly a complete lack of any evidence that the union made any such representations, it cannot be inferred from the facts before us. In fact, on August 21st, the company sent a memorandum to its employees attributing the delay in implementing changes to the union's City Core certification application, and stating that upon the withdrawal of this application the company would proceed to implement the changes. Upon the filing of the union's further application on August 23rd, it is certainly a possibility following on this sequence of events that some employees might even see the union as being responsible for yet a further potential delay in their receiving increases.

18. In sum, the facts on which the employer relies in its argument do not present a compel-



ling case for the inferences which it asks the Board to draw. In addition to the difficulties which we have outlined above, it would take an extraordinarily generous view of this union's intent and ability to implement such calculated machinations of the Board's processes to conclude from this that the union initiated all of these applications, and went through two days of evidence on one of them, all with the intent to use a statutory freeze as part of an organizing strategy and all with the prior intention of withdrawing them later. We cannot so conclude from the facts before us.

19. The employer relies on a number of cases where the Board has discussed the circumstances in which it will impose a bar to a further application for certification. These cases include: *J. W. Crooks Company, Limited*, [1972] OLRB Rep. Feb. 126; *St. Joseph's Hospital at Sarnia, Ontario*, [1984] OLRB Rep. Sept. 1264; *Sonora Cosmetics Inc.*, [1982] OLRB Rep. June 954; *D.J. Venasse Construction Limited*, [1990] OLRB Rep. Apr. 419; *D.J. Venasse Construction Limited*, [1990] O.L.R.D. No. 563; *R.J.R. MacDonald Inc.*, [1992] OLRB Rep. Apr. 503; *Patchoque Plymouth Hawkesbury Mills, A Division of Amoco Canada Petroleum Company Ltd.*, [1972] OLRB Rep. July 747; *Fruehauf Trailer Company of Canada Limited*, [1974] OLRB Rep. Jan. 6; *Belair Restoration (Ontario) Inc.*, [1992] OLRB Rep. Jan. 13 and *Re Poulter v. Office Employees International Union, Local 131*, 65 CLLC ¶16,045.

20. None of the principles in these cases lead to a conclusion that a bar is appropriate in the current situation. We agree with the discussion by the Board in *Sonora Cosmetics* regarding the Board's discretion to impose a bar:

3. The purpose of the *Labour Relations Act* is to encourage the practice and procedure of collective bargaining, and certification provides a mechanism whereby a union can become established as the employees' bargaining agent. Where there is no subsisting collective bargaining relationship, an application for certification can generally be made at any time (see section 5). Section 103 [now 105] provides a limited temporary bar to the exercise of statutory rights where the Board, in its discretion, considers it advisable; however, the Board has been reluctant to exercise that discretion where the employees have not had the opportunity to express their wishes concerning trade union representation in a Board supervised representation vote. In *Repac Construction and Material Limited*, [1978] OLRB Rep. Jan. 91 at 94 the Board summarized its approach to section 103(2)(i) (then section 92(2)(i)) as follows:

As a general principle the Board is quite reluctant to either bar, or refuse to entertain, a subsequent application for certification filed by a previously unsuccessful application. Indeed, such action is usually only taken either where employee desires have been tested by a representation vote in which the union failed to receive sufficient support to be certified (See: *Campbell Soup Company Ltd.*, [1976] OLRB Rep. Feb. 1091), or where the union has sought to avoid an unfavourable vote result by withdrawing its application following the ordering of such a vote. (See: *Mathias Ouellette* 56 CLLC ¶18,026). Exceptional circumstances may, however, also lead to the Board invoking the provisions of section 92(2)(i) in other situations. The leading example of this is the *J.W. Crooks Company* case, [1972] OLRB Rep. Feb. 126, where "in light of the special and extreme circumstances confronting the Board", namely four unsuccessful applications for certificate made by the same applicant in a little over three months, the Board imposed a six month bar on any future applications by the same applicant. In its consideration of any request pursuant to section 92(2)(i), the Board, concerned that the wishes of employees be given effect to, has always been careful not to use its authority under that section merely to punish an unsuccessful applicant union, even in those instances where the union may have engaged in previous irregular or improper conduct. (See *Fruehauf Trailer Company of Canada Limited*, [1974] OLRB Rep. Jan. 6.).

(To the same effect, see: *Patchoque Plymouth Hawkesbury Mills*, [1972] OLRB Rep. Nov. 794; *Bernardine of Canada Limited*, Board File 1437-75-R, decision dated January 26, 1976, - unreported; and *Mor-Alice Construction Limited*, [1977] OLRB Rep. Oct. 668.)



4. In exercising its discretion under section 103, the Board has not been blind to practical (or tactical) realities of the situation. A certification proceeding may appear very straight-forward to an experienced labour law practitioner, familiar with the Board's rules, policies, and jurisprudence, but to a layman or a union official who does not regularly appear before the Board, the certification process may not seem so simple. In the Board's experience, it is neither unusual nor particularly surprising that from time to time, certification applications have to be withdrawn, or are dismissed because they are not properly launched or supported in accordance with the Act and Rules. But this fact alone does not justify the imposition of a bar to a further exercise of the employees' statutory rights, nor does the Board's established practice of permitting such applications seriously inconvenience the employer. No doubt, if the union tries again, the employer must file a new employee list and post new notices on its premises advising employees of the pending application for certification. However, this is a minor inconvenience, which must be carefully weighed against the result of prohibiting employees from making any application at all. Moreover, the Board is well aware of the potential effect on the momentum of the union's organizing campaign if employees who have joined a union and indicated their desire for collective bargaining are prohibited from realizing this goal for as much as ten months. Unless there are exceptional circumstances which warrant prohibiting employees from proceeding with their attempt to organize (the *J.W. Crooks Limited* involved four unsuccessful applications in three months), the Board has been relatively lenient in imposing a bar under section 103. We are aware of no cases, nor did the respondent refer to any, where the Board has imposed a bar after the second unsuccessful application - especially where, as here, neither application ever matured into an actual hearing before the Board, and the employer is in the Toronto area so that there would be no serious inconvenience in attending at the Board offices on the day fixed for the hearing.

21. The issue of a bar has always arisen in a context where an applicant has made several unsuccessful applications covering the same or overlapping bargaining units, as in *Sonora Cosmetics*. In balancing the policy reasons for imposing a bar and the desire not to unduly restrict employees' statutory rights to organize, the Board saw no reason in that case to impose a bar after two unsuccessful applications. The facts of this case more closely resemble those in *Sonora Cosmetics Inc.* than they do those in *J.W. Crooks Company*, to which the Board referred in the excerpt above. The first application relied upon to support the request for the bar is the City Core application, which was withdrawn on the agreement of the parties. Next, the union filed three applications which must be taken together as complementary applications and not as three successive ones, since they cover three distinct bargaining units, Metropolitan Toronto, Markham and Oakville. Taken together, the three applications are consistent with the union's undertaking not to file a second application which contained a bargaining unit smaller than the Metropolitan Toronto. In this respect, therefore, there have only been two unsuccessful applications by the applicant covering overlapping bargaining units, based on which the employer requests that the Board impose a bar. As the Board indicated in *Sonora Cosmetics Inc.*, there are no Board cases where the Board has imposed a bar after a second unsuccessful application.

22. In *D.J. Venasse Construction Limited*, the Board referred to instances where repeated filings of applications which are ultimately not proceeded with constitutes an abuse of process, for example, by keeping an employer in a perpetual "freeze" for a lengthy period of time. In the context of the other Board cases in this area, it seems unlikely to this panel that the Board in *D.J. Venasse Construction* was referring to a situation where there had only been *two* unsuccessful overlapping applications, particularly since in that case, the Board had declined to impose a bar even upon the dismissal of a fifth application.

23. The employer asserted that if the Board had any doubts about the appropriate conclusions in this case, it ought to take into account the provisions of Bill 7, a bill proposing amendments to the *Labour Relations Act*. In particular, it directed the Board to provisions of that Bill which impose a mandatory bar of a year after an unsuccessful application for certification or the withdrawal of an application. It would, of course, be inappropriate to take any account of the pro-

visions of that Bill in applying the provisions of the Act currently in force. Not only does the Bill have no legal relevance to the issues before us, even as a practical matter a newly-introduced Bill is unlikely to be passed into law in exactly its original state [indeed, since the hearing of this application, changes were made prior to its enactment].

24. For the reasons expressed above, as well as the early stage of proceedings at which the request for leave to withdraw Board File Nos. 2241-95-R and 2242-95-R is made, the Board hereby grants leave and these files are withdrawn. Since Board File No. 1977-95-R had been processed to a point where the Board's normal practice has been to dismiss, we hereby dismiss that file, but without a bar.

25. Also for the reasons expressed above, we decline the employer's request to order a representation vote in Board File No. 2414-95-R and we find no reason to refuse to entertain this application. There is nothing exhibited in the facts of this case which casts a "cloud" over the circumstances of obtaining membership evidence which has led the Board in other cases to exercise its discretion to order a vote.

26. We therefore find, with respect to Board File No. 2414-95-R, that on agreement of the parties:

all employees of S & R Car Rentals Toronto (Central) Ltd. in the greater Metropolitan Toronto area including the Cities of Oakville, Milton, Vaughan and the Municipalities of Peel, Markham, Oshawa and Metropolitan Toronto, save and except Assistant Managers, persons above the rank of Assistant Manager, office, sales and clerical staff and persons in bargaining units for which any trade union held bargaining rights as of August 21, 1995,

constitute a unit of employees of the employer appropriate for collective bargaining.

27. The Board has found the applicant to be a trade union within the meaning of section 1(1) of the Act.

28. The Board is satisfied, on the basis of all the evidence before it, that more than fifty-five per cent of the employees of the responding party in the bargaining unit on September 22, 1995, the certification application date, had applied to become members of the applicant on or before that date.

29. A certificate will issue to the applicant.













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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING OCTOBER 1995

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**2810-94-R:** Ontario Public Service Employees Union (Applicant) v. North Frontenac Community Services Corporation (Respondent)

Unit: "all employees of the North Frontenac Community Services Corporation in the County of Frontenac, save and except the Coordinator of Programs and Services and Child Care Centre Coordinator, persons above the ranks of Coordinator of Programs and Services and Child Care Centre Coordinator, Executive Assistant, Home Support Volunteers, Financial Manager and Day Care Supervisor" (22 employees in unit)

**3910-94-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Granville Constructors Ltd. and Ravico Contracting Ltd. (Respondents)

Unit: "all construction labourers in the employ of Granville Constructors Ltd. and Ravico Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Granville Constructors Ltd. and Ravico Contracting Ltd. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka; and the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except those geographic areas in Board Area 18 for which any other trade union held bargaining rights as of February 7, 1995" (4 employees in unit)

**4120-94-R:** Canadian Union of Public Employees (Applicant) v. Native Child and Family Services of Toronto (Respondent)

Unit: "all employees of Native Child and Family Services of Toronto in the Municipality of Metropolitan Toronto, save and except program coordinators and Supervisors, and persons above the rank of Program Coordinator and Supervisor" (17 employees in unit) (*Having regard to the agreement of the parties*)

**0459-95-R:** Ontario Public Service Employees Union (Applicant) v. Canwood Inc. (Respondent)

Unit: "all employees of Canwood Inc. c.o.b. as Phoenix I and Phoenix II in the Municipality of Muskoka, save and except Directors and persons above the rank of Director" (14 employees in unit)

**0868-95-R:** Canadian Hotel and Service Workers Union (Applicant) v. Romzap Ltd. c.o.b. as Sheraton Fallsview Hotel & Conference Centre (Respondent)

Unit: "all employees of Romzap Ltd. c.o.b. as Sheraton Fallsview Hotel & Conference Centre in the City of Niagara Falls, save and except supervisors and persons above the rank of supervisor" (261 employees in unit) (*Having regard to the agreement of the parties*)

**1247-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 173 (Applicant) v. Niagara Falls Theatre Venture (Respondent) v. Bernard Willer (Objector)

Unit: "all projectionists employed by the Niagara Falls Theatre Venture in the City of Niagara Falls, save and except managers and persons above the rank of manager" (3 employees in unit)

**1294-95-R:** United Steelworkers of America (Applicant) v. Via Personnel Services Ltd., and/or CareTech



Management Group of Cambridge, and Highland Manor Retirement Lodge Partnership, and 712736 Ontario Inc. (Respondents)

Unit: "all employees of Via Personnel Services Ltd., CareTech Management Group of Cambridge, Highland Manor Retirement Lodge Partnership and 712736 Ontario Inc. at 110 Belsyde Avenue East, in the Town of Fergus, save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff and Activity Director" (32 employees in unit) (*Having regard to the agreement of the parties*)

**1516-95-R:** Ontario Public Service Employees Union (Applicant) v. Victorian Order of Nurses, Hamilton-Wentworth Branch (Respondent)

Unit: "all employees of Victorian Order of Nurses, Hamilton-Wentworth Branch in the Regional Municipality of Hamilton-Wentworth, save and except supervisors, persons above the rank of supervisor, persons for which any trade union held bargaining rights as of July 14, 1995, consumer relations co-ordinator, human resources administrator, administrative secretary to the Executive Director, administrative secretary - administration, occupational health and safety co-ordinator, administrative secretary - visiting nursing program, administrative secretary - corporate services, secretary - community relations, administrative secretary - office services and building and grounds maintenance person" (451 employees in unit) (*Having regard to the agreement of the parties*)

**1528-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Erin Park Automotive Limited (Respondent)

Unit: "all employees of Erin Park Automotive Limited working at 2411 Motorway Boulevard in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (34 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1753-95-R:** Teamsters Local Union No. 419 (Applicant) v. Tenaquip Ltd. (Respondent)

Unit: "all employees of Tenaquip Ltd. in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office and sales staff" (9 employees in unit)

**1900-95-R:** International Union of Bricklayers and Allied Craftsmen, Local 5 (Applicant) v. Robert Kelso c.o.b. H & R Contracting (Respondent)

Unit: "all bricklayers and bricklayers' apprentices in the employ of Robert Kelso c.o.b. H & R Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all bricklayers and bricklayers' apprentices in the employ of Robert Kelso c.o.b. H & R Contracting in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

**1950-95-R:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Sisters of St. Joseph for the Diocese of Toronto in Upper Canada (Respondent)

Unit: "all lay employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada at Morrow Park in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, registered and graduate nurses, physiotherapists and employees in bargaining units for which any trade union held bargaining rights as of August 18th 1995" (84 employees in unit) (*Having regard to the agreement of the parties*)

**1971-95-R:** International Brotherhood of Painters and Allied Trades, Local 1671 (Applicant) v. Ed-Way Contractors Ltd. (Respondent)

Unit: "all journeymen and apprentice painters in the employ of Ed-Way Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice painters in the employ of Ed-Way Contractors Ltd. in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and

except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2028-95-R:** Canadian Union of Public Employees (Applicant) v. Temiskaming Lodge Ltd. (Respondent)

Unit: “all employees of Temiskaming Lodge Ltd. in the Town of Haileybury, save and except registered and graduate nurses, secretary/accounting, supervisors and persons above the rank of supervisor” (70 employees in unit)

**2077-95-R:** International Association of Heat and Frost Insulators and Asbestos Workers Local 95 (Applicant) v. All Ports Insulations & Asbestos Service Ltd. (Respondent)

Unit: “all journeymen and apprentice insulators and asbestos workers in the employ of All Ports Insulations & Asbestos Service Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice insulators and asbestos workers in the employ of All Ports Insulations & Asbestos Service Ltd. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, and in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (16 employees in unit)

**2114-95-R:** United Food & Commercial Workers International Union (Applicant) v. Larsen Transfer of Sudbury Limited (Respondent)

Unit: “all employees of the Larsen Transfer of Sudbury Limited at and out of the Regional Municipality of Sudbury, save and except supervisors, persons above the rank of supervisor, office and clerical staff” (20 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2219-95-R:** Canadian Union of Public Employees (Applicant) v. Victorian Order of Nurses Eastern Lake Ontario Branch (Respondent)

Unit: “all graduate and registered nurses employed in a nursing capacity by the Victorian Order of Nurses Eastern Lake Ontario Branch, in the City of Kingston, save and except Managers, persons above the rank of Manager, office and clerical staff” (87 employees in unit) (*Having regard to the agreement of the parties*)

**2228-95-R:** International Brotherhood of Electrical Workers (Applicant) v. General Signal Limited (Respondent)

Unit: “all employees of General Signal Limited in the City of London, save and except supervisors, persons above the rank of supervisor, office and sales staff” (6 employees in unit) (*Having regard to the agreement of the parties*)

**2239-95-R:** IBEW Construction Council of Ontario (Applicant) v. Columbus Electrical Contractors, Division of 1064186 Ontario Limited (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of Columbus Electrical Contractors, Division of 1064186 Ontario Limited, in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians’ apprentices in the employ of Columbus Electrical Contractors, Division of 1064186 Ontario Limited in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

**2279-95-R:** Ontario Sheet Metal Workers’ Conference, Sheet Metal Workers’ International Association (Applicants) v. Falco Stainless Steel Equipment Ltd. (Respondent)



Unit: "all journeymen and apprentice sheet metal workers in the employ of Falco Stainless Steel Equipment Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice sheet metal workers in the employ of Falco Stainless Steel Equipment Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2312-95-R:** Service Employees International Union, Local 204 affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Morrison Residence (Cheshire) Foundation (Respondent)

Unit: "all employees regularly employed for not more than 24 hours per week of Morrison Residence (Cheshire) Foundation in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, students employed during the school vacation period and persons for whom a trade union held bargaining rights as of September 15, 1995" (15 employees in unit) (*Having regard to the agreement of the parties*)

**2313-95-R:** United Steelworkers of America (Applicant) v. Cleveland Range Ltd. (Respondent)

Unit: "all employees of Cleveland Range Ltd. in the City of Vaughan, save and except supervisors, persons above the rank of supervisor, office, clerical, technical and sales staff" (137 employees in unit) (*Having regard to the agreement of the parties*)

**2324-95-R:** Canadian Union of Public Employees (Applicant) v. Family Crisis Shelter (Respondent)

Unit: "all employees of the Family Crisis Shelter in the Regional Municipality of Waterloo, save and except Executive Directors, Supervisors, persons above the rank of Supervisor, Bookkeeper/Receptionist and co-operative students" (15 employees in unit) (*Having regard to the agreement of the parties*)

**2337-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Santa Maria Foods Limited (Respondent)

Unit: "all employees of Santa Maria Foods Limited in the City of Belleville, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (59 employees in unit) (*Having regard to the agreement of the parties*)

**2339-95-R:** Ontario Secondary School Teachers' Federation (Applicant) v. Waterloo County Board of Education (Respondent)

Unit: "all student service personnel, including, but not limited to Social Workers, Speech and Language Pathologists, Attendance Counsellors, Communication Disorder Assistants employed by the Waterloo County Board of Education in the Regional Municipality of Waterloo, save and except Superintendents, persons above the rank of Superintendent and all persons for whom a trade union held bargaining rights as of September 19, 1995" (17 employees in unit) (*Having regard to the agreement of the parties*)

**2349-95-R:** Ontario Public Service Employees Union (Applicant) v. Niagara-on-the-Lake Hospital (Respondent)

Unit: "all ambulance officer employees of the Niagara-on-the-Lake Hospital in the Town of Niagara-on-the-Lake, save and except Managers, persons above the rank of Manager and any persons for which any trade union held bargaining rights as of September 13, 1995" (10 employees in unit) (*Having regard to the agreement of the parties*)

**2350-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. The Warehouse Drugstore Ltd., c.o.b. as Hy & Zel's (Respondent)

Unit: "all employees of The Warehouse Drugstore Ltd., c.o.b. as Hy & Zel's in the City of Oshawa, save and except Assistant Store Managers, persons above the rank of Assistant Store Manager, Point of Sale Coordinators, Graduate and Undergraduate Pharmacists including Pharmacy Interns and Apprentice Pharmacists" (48 employees in unit) (*Having regard to the agreement of the parties*)



**2352-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent)

Unit: "all employees of Zellers Inc. employed at its store located at 540 Dundas Street West, Sydney Township, Hastings County, save and except Supervisors/Group Merchandisers, persons above the rank of Supervisor/Group Merchandiser, Loss Prevention Officers, Personnel Clerks, Pharmacy Managers, Graduate and Undergraduate Pharmacists, including Pharmacy Interns and Apprentice Pharmacists, and students employed in a co-operative work program" (81 employees in unit) (*Having regard to the agreement of the parties*)

**2373-95-R:** Ontario Public Service Employees Union (Applicant) v. Homes First Society (Respondent)

Unit: "all employees of Homes First Society regularly employed for not more than 24 hours per week in the Regional Municipality of Metropolitan Toronto, save and except Supervisors and persons above the rank of Supervisor, the Administrative Assistant, Financial Resources Officer, Human Resources Facilitator and Executive Officer, tenant employees, students employed during the school vacation period and students employed on a cooperative program from school, college or university" (12 employees in unit) (*Having regard to the agreement of the parties*)

**2392-95-R:** Canadian Union of Postal Workers (Applicant) v. Mister Gallant Services Ltd. (Respondent)

Unit: "all employees of Mister Gallant Services Ltd., in the City of Windsor, save and except supervisors, persons above the rank of supervisor and clerical staff" (8 employees in unit) (*Having regard to the agreement of the parties*)

**2420-95-R:** United Food and Commercial Workers International Union (Applicant) v. 1124828 Ontario Inc. c.o.b. as Loeb Club Plus (Respondent)

Unit: "all employees of 1124828 Ontario Inc. c.o.b. as Loeb Club Plus in the Corporation of the Town of Blind River, save and except Managers, persons above the rank of Manager and the Bookkeeper" (23 employees in unit) (*Having regard to the agreement of the parties*)

**2437-95-R:** L'Association des enseignantes et des enseignants franco-ontariens (Applicant) v. Le Conseil des écoles séparées du district de Sudbury (Respondent)

Unit: "les enseignantes et les enseignants suppléants qualifiés à l'emploi du Conseil des écoles séparées du district de Sudbury dans ses écoles élémentaires et secondaires où le français est la langue d'enseignement en conformité avec la partie XII de la Loi sur l'éducation" (133 employees in unit)

**2441-95-R:** Ontario Public Service Employees Union (Applicant) v. St. Joseph's Health Centre of Sarnia (Respondent)

Unit: "all paramedical employees of the St. Joseph's Health Centre of Sarnia in the City of Sarnia, save and except supervisors, persons above the rank of supervisor and employees for which any trade union held bargaining rights as of September 25, 1995" (104 employees in unit) (*Having regard to the agreement of the parties*)

**2442-95-R:** Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro & Construction Drivers, Warehousemen & Helpers (Applicant) v. Lafarge Construction Materials Division of Lafarge Canada Inc. (Respondent)

Unit: "all truck drivers of Lafarge Construction Materials Division of Lafarge Canada Inc. at Vankleek Hill and Bourget sites in the United Counties of Prescott and Russell, save and except foremen, persons above the rank of foreman, batcher dispatcher, office and sales staff" (5 employees in unit) (*Having regard to the agreement of the parties*)

**2443-95-R:** Ontario Public Service Employees Union (Applicant) v. Murray McKinnon Foundation (Respondent)

Unit: "all employees of Murray McKinnon Foundation in the Village of Millbrook in the County of Peterborough and in the City of Oshawa in the Regional Municipality of Durham, save and except supervisors and persons above the rank of supervisor, maintenance workers and office and clerical employees" (52 employees in unit) (*Having regard to the agreement of the parties*)

**2465-95-R:** Wilfred Laurier University Staff Association (Applicant) v. Wilfrid Laurier University and Waterloo Lutheran Seminary (Respondent)

Unit: "all office, clerical and technical employees of Wilfrid Laurier University in the Regional Municipality of Waterloo and the City of Barrie, save and except managers, persons above the rank of manager, security guards, persons employed by Wilfrid Laurier University Student Union, persons employed by Waterloo Lutheran Seminary, persons employed in a confidential capacity in matters relating to labour relations and persons in bargaining units for which any trade union held bargaining rights as of September 27, 1995" (294 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2478-95-R:** Ontario Nurses' Association (Applicant) v. Ontario Cancer Treatment and Research Foundation, London Regional Cancer Centre (Respondent) v. Group of Employees (Objectors)

Unit: "all Radiation Therapists, X-ray Technicians, Phlebotomists, Haematology Laboratory Technologists working in the positions of Radiation Therapist, X-ray Technician, Phlebotomist and Haematology Laboratory Technologist, Registered Practical Nurses working in a nursing capacity employed by Ontario Cancer Treatment and Research Foundation, London Regional Cancer Centre at its 790 Commissioners Road East location in the City of London, save and except Supervisors and persons above the rank of Supervisor" (43 employees in unit) (*Having regard to the agreement of the parties*)

**2482-95-R:** Ontario Nurses' Association (Applicant) v. Parkview Nursing Centre (Respondent)

Unit: "all Registered and Graduate Nurses employed by Parkview Nursing Centre in the City of Hamilton, save and except Assistant Directors of Care and persons above the rank of Assistant Director of Care" (6 employees in unit) (*Having regard to the agreement of the parties*)

**2485-95-R:** Canadian Union of Public Employees (Applicant) v. Hamilton-Wentworth Children's Aid Society (Respondent)

Unit: "all office and clerical employees of the Hamilton-Wentworth Children's Aid Society in the Regional Municipality of Hamilton-Wentworth, save and except Secretary to the Assistant Director of Services, Secretaries to Directors, Administrative Assistant and persons for whom a trade union held bargaining rights on September 28, 1995" (22 employees in unit)

**2489-95-R:** United Steelworkers of America (Applicant) v. Keele Street Bingo Country Inc. (Respondent)

Unit: "all employees of Keele Street Bingo Country Inc. located at 2355 Keele Street in the Municipality of Metropolitan Toronto, save and except Managers, persons above the rank of Manager, office and clerical staff" (23 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2503-95-R:** IWA - Canada (Applicant) v. Pannill Veneer Co. Limited (Respondent)

Unit: "all employees of Pannill Veneer Co. Limited in the City of Kitchener, save and except supervisors, persons above the rank of supervisor, office and sales staff" (126 employees in unit) (*Having regard to the agreement of the parties*)

**2511-95-R:** Ontario Public Service Employees Union (Applicant) v. The Salvation Army Broadview Village (Respondent)

Unit: "all employees of The Salvation Army Broadview Village in the Municipality of Metropolitan Toronto, save and except House Managers and persons above the rank of House Manager" (69 employees in unit) (*Having regard to the agreement of the parties*)



**2516-95-R:** Ontario Secondary School Teachers' Federation (Applicant) v. The Muskoka Board of Education (Respondent)

Unit: "all employees of The Muskoka Board of Education engaged in maintenance service and plant operations in the District of Muskoka, save and except Supervisors, persons above the rank of Supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (90 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2522-95-R:** United Steelworkers of America (Applicant) v. De Santis Industrial Springs & Stampings Inc. (Respondent)

Unit: "all employees of De Santis Industrial Springs & Stampings Inc. in the Town of Caledonia, save and except Supervisors, persons above the rank of Supervisor, sales staff, Bookkeeper and Office Manager" (18 employees in unit) (*Having regard to the agreement of the parties*)

**2524-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. The Warehouse Drug Store Ltd., c.o.b. as Hy & Zel's (Respondent)

Unit: "all employees of The Warehouse Drug Store Ltd., c.o.b. as Hy & Zel's at 8360 Kennedy Road in the City of Markham, save and except Assistant Store Managers, persons above the rank of Assistant Store Manager, Point of Sale Co-ordinators, Graduate and Undergraduate Pharmacists including Pharmacy Interns and Apprentice Pharmacists" (41 employees in unit) (*Having regard to the agreement of the parties*)

**2525-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Ontario Northland Transportation Commission (Respondent)

Unit: "all employees of Ontario Northland Transportation Commission employed at the Cochrane Station Inn in the Town of Cochrane, save and except supervisors, persons above the rank of supervisor and persons in bargaining units for which any trade union held bargaining rights as of October 2, 1995" (7 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2542-95-R:** Bakery, Confectionery and Tobacco Workers' International Union, Local 264 (Applicant) v. 674446 Ontario Ltd., c.o.b. as mmmarvelous mmmuffins (Respondent)

Unit: "all employees of 674446 Ontario Ltd., c.o.b. as mmmarvelous mmmuffins located at 3401 Dufferin Street in the City of North York, save and except supervisors and persons above the rank of supervisor" (9 employees in unit) (*Having regard to the agreement of the parties*)

**2546-95-R:** Canadian Union of Public Employees (Applicant) v. Women's Habitat of Etobicoke (Respondent)

Unit: "all employees of Women's Habitat of Etobicoke in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (27 employees in unit) (*Having regard to the agreement of the parties*)

**2551-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Sachs Automotive Components Inc. (Respondent)

Unit: "all employees of Sachs Automotive Components Inc. in the Town of Tillsonburg, save and except Supervisors, persons above the rank of Supervisor, sales, engineering, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (50 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2554-95-R:** Ontario Secondary School Teachers' Federation (Applicant) v. West Parry Sound Board of Education (Respondent)

Unit: "all Plant Support Staff Unit employees employed by the West Parry Sound Board of Education in the District of Parry Sound regularly employed for not more than 24 hours per week, save and except Supervisors, persons above the rank of Supervisor, students employed during the school vacation period and employ-



ees in the bargaining unit(s) for which any trade union held bargaining rights as of October 4, 1995” (8 employees in unit) (*Having regard to the agreement of the parties*)

**2567-95-R:** Ontario Nurses’ Association (Applicant) v. Jewish Home for the Aged & The Terrace Baycrest Hospital (Respondent)

Unit #1: “all Registered and Graduate Nurses employed in a nursing capacity at Jewish Home for the Aged and the Terrace at Baycrest Centre in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, Nurse Clinicians and persons regularly employed for not more than 24 hours per week” (30 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: (see Applications for Certification Withdrawn)

**2573-95-R:** Service Employees Union, Local 478 (Applicant) v. Lady Isabelle Nursing Home Ltd. (Respondent)

Unit: “all employees of Lady Isabelle Nursing Home Ltd. in the Town of Trout Creek, save and except Supervisors, persons above the rank of Supervisor, Registered Nurses, Physiotherapists, Occupational Therapists, office staff and persons in bargaining units for which any trade union held bargaining rights as of October 4, 1995” (53 employees in unit) (*Having regard to the agreement of the parties*)

**2593-95-R:** Ontario Public Service Employees Union (Applicant) v. Norfolk General Hospital (Respondent)

Unit: “all Medical Radiological Technologists and Medical Radiological Technicians employed by Norfolk General Hospital (Simcoe) in the Town of Simcoe, save and except Assistant Chief Technologist, persons above the rank of Assistant Chief Technologist and persons for which any trade union held bargaining rights as of October 6, 1995” (10 employees in unit) (*Having regard to the agreement of the parties*)

**2633-95-R:** Ontario Public Service Employees Union (Applicant) v. Alcoholism & Drug Addiction Research Foundation (Respondent)

Unit: “all employees of the Alcoholism & Drug Addiction Research Foundation in the City of Mississauga, save and except Supervisors and persons above the rank of Supervisor” (6 employees in unit) (*Having regard to the agreement of the parties*)

### **Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**1733-95-R:** Canadian Union of Public Employees (Applicant) v. Hôpital Montfort (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener)

Unit: “all employees of Hôpital Montfort, including maintenance engineers, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dieticians, student dieticians, technical personnel, office and clerical staff, supervisors, foremen, persons above the rank of foremen, students employed during the school vacation periods, plant superintendent, assistant plant superintendent and persons for whom any trade union held bargaining rights as of August 2, 1995,” (170 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	195
Number of persons who cast ballots	109
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	105
Number of ballots marked in favour of intervener	3

**1992-95-R:** Ontario Public School Teachers’ Federation (Applicant) v. Perth County Board of Education (Respondent)

Unit: “all occasional teachers while employed by the Perth County Board of Education in its elementary panel in Perth County, save and except persons who, when they are employed as substitutes for other teach-

ers, are teachers as defined in the School Boards and Teachers Collective Negotiations Act” (187 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	185
Number of persons who cast ballots	71
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	70
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	68
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

### Applications for Certification Dismissed Without Vote

**1858-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto (Applicant) v. Crocodile Labour Services Inc. (Respondent)

### Applications for Certification Dismissed Subsequent to a Pre-Hearing Vote

**2196-95-R:** United Steelworkers of America (Applicant) v. Cinram Ltd. (Respondent) v Group of Employees (Objectors)

Unit #1: “all employees of Cinram Ltd. in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and order expeditors and/or customer service and security persons.” (500 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	593
Number of persons who cast ballots	579
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	269
Number of ballots marked against applicant	293
Number of ballots segregated and not counted	15

### Applications for Certification Dismissed Subsequent to a Post-Hearing Vote

**1839-95-R:** Teamsters Local Union 938 (Applicant) v. John's Cartage Waste Management Services Ltd. (Respondent)

Unit: “all employees of John's Cartage Waste Management Services Ltd. in the County of Victoria, save and except supervisors, persons above the rank of supervisor, office staff and students employed during school vacation periods” (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	7

**1925-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Auto-Pak Ltd. (Respondent)

Unit: “all employees of Auto-Pak Ltd. in the City of Hawkesbury, save and except supervisors, persons above the rank of supervisor, office and clerical staff and students employed during the school vacation period” (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
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Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	12

### **Applications for Certification Withdrawn**

**4279-94-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Contract Cable Toronto Inc. (Respondent)

**4668-94-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Amcan Castings Limited, Burlington Division (Respondent)

**0322-95-R:** Hospitality, Commercial and Service Employees Union of Canada (Applicant) v. Royal Canadian Legion, Ortona Branch 113 Thunder Bay, Ontario (Respondent) v. Hospitality, Commercial and Service Employees Union, Local 73 Chartered by Hotel Employees and Restaurant Employees International Union; and Hotel Employees and Restaurant Employees International Union (Intervenors)

**0446-95-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Eastech Electric Inc. (Respondent)

**0921-95-R:** International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Sota Glazing Inc. (Respondent)

**1209-95-R:** Hospitality, Commercial and Service Employees Union of Canada (Applicant) v. Saan Stores Ltd. (Respondent) v. Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees and Restaurant Employees International Union, and Hotel Employees and Restaurant Employees International Union (Intervener)

**1732-95-R:** Canadian Union of Public Employees (Applicant) v. Hôpital Montfort (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener)

**1940-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Robert Kelso c.o.b. H & R Contracting (Respondent)

**2205-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. University of Western Ontario (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

**2246-95-R:** IWA - Canada (Applicant) v. Dynamic & Proto Circuits Inc. (Respondent)

**2344-95-R:** United Food & Commercial Workers International Union (Applicant) v. 401139 Ontario Limited c.o.b. as Lockerby Transportation Group (Respondent)

**2370-95-R:** Canadian Security Union (Applicant) v. Peel Condominium Corporation No. 239 (Respondent)

**2371-95-R:** International Union of Bricklayers and Allied Craftsmen, Local 2, Ontario (Applicant) v. Canadian Tire Petroleum Division of Canadian Tire Corporation Limited (Respondent)

**2409-95-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Sterling Hotels International Inc. (Respondent)

**2567-95-R:** Ontario Nurses' Association (Applicant) v. Jewish Home for the Aged & The Terrace Baycrest Hospital (Respondent)



## APPLICATION FOR COMBINATION OF BARGAINING UNITS

**3328-93-R:** Laurentian University Faculty Association (Applicant) v. Laurentian University of Sudbury (Respondent) (*Granted*)

**0777-94-R:** Carleton University (Applicant) v. Canadian Union of Public Employees (Respondent) (*Withdrawn*)

**0323-95-R:** Hospitality, Commercial and Service Employees Union of Canada (Applicant) v. Royal Canadian Legion, Ortona Branch 113 Thunder Bay, Ontario (Respondent) v. Hospitality, Commercial and Service Employees Union, Local 73 Chartered by Hotel Employees and Restaurant Employees International Union; and Hotel Employees and Restaurant Employees International Union (Interveners) (*Withdrawn*)

**0404-95-R:** Local 715 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Beatrice Foods Inc. (Respondent) (*Withdrawn*)

**0442-95-R:** Canadian Union of Public Employees, Local 114 (Applicant) v. Corporation of the Borough of East York (Respondent) (*Withdrawn*)

**1124-95-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Beaver Foods Limited (Respondent) (*Withdrawn*)

**1147-95-R:** United Food and Commercial Workers International Local 175 (Applicant) v. Zellers Inc. (Respondent) (*Granted*)

**1154-95-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Versa Services Ltd. (Respondent) (*Withdrawn*)

**1242-95-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Can Can Food & Vending Services Ltd. (Respondent) (*Granted*)

**1315-95-R:** Canadian Union of Public Employees, Local 79 (Applicant) v. The Board of Governors of the Riverdale Hospital (Respondent) (*Granted*)

**1316-95-R:** Canadian Union of Public Employees, Local 79 (Applicant) v. The Board of Governors of the Riverdale Hospital (Respondent) (*Granted*)

**1392-95-R:** United Food and Commercial Workers International Local 175 (Applicant) v. Thrifty Canada Limited (Respondent) (*Granted*)

**1399-95-R:** Local 582 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Work Wear Corporation of Canada Ltd. (Respondent) (*Granted*)

**1400-95-R:** Local 715 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Coca-Cola Bottling Ltd. (Respondent) (*Withdrawn*)

**1414-95-R:** Local 715 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Weston Bakeries Limited (Respondent) (*Withdrawn*)

**1629-95-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees' International Union, Local 351 (Applicant) v. Workwear Corporation of Canada Ltd., Brighton Laundry Limited, Faster Linen Service Ltd., K-Bro Linen Systems Inc., Model Uniform Rental Services, Topper Linen Supply

Limited, Whiteway Industrial Linen Service Ltd. and The Textile Rental Institute of Ontario (Respondents) (*Withdrawn*)

**1630-95-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees' International Union, Local 351 (Applicant) v. Booth Centennial Healthcare Linen Services Inc. (formerly known as Booth Avenue Hospital Laundry Inc. and Centennial Hospital Linen Services); London Hospital Linen Services Inc. and The Textile Rental Institute of Ontario (Respondents) (*Withdrawn*)

**1800-95-R:** Ontario Public Service Employees Union (Applicant) v. The Children's Aid Society of the County of Perth (Respondent) (*Granted*)

**1860-95-R:** Brewery, General and Professional Workers Union (Applicant) v. Diversey Inc. (Respondent) (*Granted*)

**1919-95-R:** Canadian Union of Public Employees and its Local 2557 (Applicant) v. The Corporation of the County of Lambton (Respondent) (*Granted*)

**1984-95-R:** Power Workers' Union, CUPE Local 1000 (Applicant) v. The Public Utilities Commission of the City of Sault Ste. Marie (Respondent) (*Granted*)

**2214-95-R:** Local 429 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Jessel Foods Inc. (Respondent) (*Granted*)

**2314-95-R:** Ontario Public Service Employees Union (Applicant) v. Madame Vanier Children's Services (Respondent) (*Granted*)

**2315-95-R:** Ontario Public Service Employees Union (Applicant) v. Children's Aid Society of Ottawa-Carleton (Local 454) (Respondent) (*Withdrawn*)

**2316-95-R:** Ontario Public Service Employees Union (Applicant) v. Community Living London (Respondent) (*Granted*)

**2340-95-R:** Ontario Secondary School Teachers' Federation (Applicant) v. Waterloo County Board of Education (Respondent) (*Granted*)

**2348-95-R:** Service Employees International Union, Local 528 (Applicant) v. The Ontario Jockey Club (Respondent) (*Withdrawn*)

**2351-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. The Warehouse Drug Store Ltd., c.o.b. as Hy & Zel's (Respondent) (*Withdrawn*)

**2353-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent) (*Withdrawn*)

**2374-95-R:** Ontario Public Service Employees Union (Applicant) v. Homes First Society (Respondent) (*Withdrawn*)

**2512-95-R:** Morrison Residence (Cheshire) Foundation (Applicant) v. Service Employees International Union, Local 204 Affiliated with the SEIU, A.F. of L., CIO, CLC (Respondent) (*Withdrawn*)

**2555-95-R:** Ontario Secondary School Teachers' Federation (Applicant) v. West Parry Sound Board of Education (Respondent) (*Granted*)

**2568-95-R:** Ontario Nurses' Association (Applicant) v. Jewish Home for the Aged & The Terrace Baycrest Hospital (Respondent) (*Granted*)

**2594-95-R:** Ontario Public Service Employees Union (Applicant) v. Norfolk General Hospital (Respondent) (*Granted*)

**2634-95-R:** Ontario Public Service Employees Union (Applicant) v. Alcoholism & Drug Addiction Research Foundation (Respondent) (*Granted*)

## **FIRST AGREEMENT - DIRECTION**

**2019-95-FC:** The Westin Harbour Castle Hotel (Applicant) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Respondent) (*Withdrawn*)

**2572-95-FC:** Service Employees Union, Local 210 (Applicant) v. Canadian Red Cross Society (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**1346-90-R; 1347-90-R:** Teamsters Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (Applicant) v. Steinberg Inc. (Miracle Food Mart Division), The Great Atlantic and Pacific Company of Canada Limited (Respondents) v. Retail Wholesale and Department Store Union, AFL, CIO, CLC and its local 414 (Intervener) (*Dismissed*)

**2067-93-R; 2068-93-R:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Bradsil Limited, Bradsil (1967) Limited, Bradsil (1980) Limited, Bradsil Leaseholds Limited, Bradscot Construction Limited, Bradscot Limited, Bradscot Management Limited, Bradscot Western Limited, Bradscot Northern Limited, Bradscot (MCL) Ltd. (Respondents) (*Endorsed Settlement*)

**0119-94-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 694643 Ontario Limited c.o.b. as O'Connor Electric and Morell Electric Ltd. (Respondents) v. Construction Workers Local 6, affiliated with Christian Labour Association of Canada (Intervener) (*Dismissed*)

**0484-94-R; 1801-94-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. PCL Constructors Eastern Inc.; PCL Construction Limited; PCL Industrial Constructors Inc.; PCL Constructors Inc.; PCL Employees Holdings Ltd.; PCL Construction Holdings Ltd.; PCL Construction Resources Inc.; PCL Construction Group Inc. (Respondents); International Union of Operating Engineers, Local 793 (Applicant) v. PCL Constructors Eastern Inc.; PCL Construction Limited; 18127 Alberta Limited; PCL Industrial Constructors Inc.; PCL Constructors Inc.; PCL Civil Constructors (Canada) Inc.; PCL Employees Holdings Ltd.; PCL Construction Holdings Ltd.; PCL Construction Resources Inc.; PCL Construction Group Inc. (Respondents) (*Granted*)

**3212-94-R:** Teamsters Local Union No. 879 affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Delta Ready Mix Limited and Hamilton Ready Mix Ltd., S. McNally & Sons Limited (Respondents) (*Dismissed*)

**3422-94-R:** Teamsters Union Local 990 affiliated with International Brotherhood of Teamsters formerly known as International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. 656934 Ontario Ltd. c.o.b. as 1st Machinery Movers and Hi-Tek Engineered Design Transportation Inc. formerly known as All Purpose Float Services and Donald E. Parks and Luella Parks (Respondents) (*Terminated*)

**3570-94-R:** Labourers' International Union of North America, Local 527 (Applicant) v. Denis Brisbois Contractor (1992) Limited, Denis Brisbois Contractor Limited, Denis Brisbois Holdings Limited, 1091857 Ontario Inc. operating as Brisbois Contractors (Respondents) (*Granted*)

**4223-94-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 2837099 Canada Inc.,



a.k.a. Convent Glen Electric Ltd., Marois Electric (1980) Limited/Marois Electrique (1980) Limitee, Jack Laroche, c.o.b. as Eastech Electric (Respondents) (*Withdrawn*)

**4228-94-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Granville Constructors Ltd. and Ravico Contracting Ltd. (Respondents) (*Granted*)

**0257-95-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Draft Masonry (York) Company Limited, Draft Bricklayers Ltd., La Torre Masonry Limited, Roton Investments Limited, 952154 Ontario Limited and Geometric Masonry Limited (Respondents) (*Endorsed Settlement*)

**1126-95-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Contract Cable Toronto Inc. and/or Phasecom Systems Inc. (Respondent) (*Withdrawn*)

**1318-95-R:** United Steelworkers of America (Applicant) v. Via Personnel Services Ltd., and/or CareTech Management Group of Cambridge, and Highland Manor Retirement Lodge Partnership, and 712736 Ontario Inc. (Respondents) (*Granted*)

**1485-95-R:** International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Karl Harm Limited, Franlynn Installations Limited (Respondents) (*Terminated*)

**1586-95-R:** Labourers' International Union of North America, Local 527 (Applicant) v. The McBride Group Inc., 686758 Ontario Limited c.o.b. as Colonial Building Restoration (Respondents) (*Withdrawn*)

**2086-95-R:** United Steelworkers of America (Applicant) v. Peel Paper Products Ltd., Torontario Paper Products Ltd., Mario Fierro, Arnaldo Fierro, Anna Maria Felice (Respondents) (*Terminated*)

**2288-95-R:** IBEW Construction Council of Ontario (Applicant) v. 697235 Ontario Limited c.o.b. as Northview Electrical Contractors and/or Karlin Investments Ltd. and/or Columbus Electric (Respondents) (*Endorsed Settlement*)

**2323-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. J-AAR Excavating Limited and 756949 Ontario Ltd. (Respondents) (*Withdrawn*)

**2612-95-R:** The International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Rowilco Inc. c.o.b. as All-Pro Contractors and Performance Electrical Contractors Ltd. (Respondents) (*Endorsed Settlement*)

## SALE OF A BUSINESS

**1346-90-R:** Teamsters Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America (Applicant) v. Steinberg Inc. (Miracle Food Mart Division) and The Great Atlantic and Pacific Company of Canada Limited (Respondents) v. Retail, Wholesale and Department Store Union, AFL CIO CLC and its Local 414 (Intervener) (*Dismissed*)

**2067-93-R; 2068-93-R:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Bradsil Limited, Bradsil (1967) Limited, Bradsil (1980) Limited, Bradsil Leaseholds Limited, Bradscot Construction Limited, Bradscot Limited, Bradscot Management Limited, Bradscot Western Limited, Bradscot Northern Limited, Bradscot (MCL) Ltd. (Respondents) (*Endorsed Settlement*)

**4496-93-R:** University of Guelph Staff Association (Applicant) v. University of Guelph and Lifelearn V. Inc. (Respondents) (*Dismissed*)

**0119-94-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 694643 Ontario Limited c.o.b. as O'Connor Electric and Morell Electric Ltd. (Respondents) v. Construction Workers Local 6, affiliated with Christian Labour Association of Canada (Intervener) (*Dismissed*)

**0484-94-R; 1801-94-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. PCL Constructors Eastern Inc.; PCL Construction Limited; PCL Industrial Constructors Inc.; PCL Constructors Inc.; PCL Employees Holdings Ltd.; PCL Construction Holdings Ltd.; PCL Construction Resources Inc.; PCL Construction Group Inc. (Respondents); International Union of Operating Engineers, Local 793 (Applicant) v. PCL Constructors Eastern Inc.; PCL Construction Limited; 18127 Alberta Limited; PCL Industrial Constructors Inc.; PCL Constructors Inc.; PCL Civil Constructors (Canada) Inc.; PCL Employees Holdings Ltd.; PCL Construction Holdings Ltd.; PCL Construction Resources Inc.; PCL Construction Group Inc. (Respondents) (*Granted*)

**3096-94-R:** Ontario Pipe Trades Council, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 666 (Applicant) v. Garth Warren Philbrick c.o.b. as G.T.D. Enterprises and/or G.T.D. and Dorval Mechanical Inc. (Respondents) (*Dismissed*)

**3212-94-R:** Teamsters Local Union No. 879 affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Delta Ready Mix Limited and Hamilton Ready Mix Ltd., S. McNally & Sons Limited (Respondents) (*Dismissed*)

**3422-94-R:** Teamsters Union Local 990 affiliated with International Brotherhood of Teamsters formerly known as International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. 656934 Ontario Ltd. c.o.b. as 1st Machinery Movers and Hi-Tek Engineered Design Transportation Inc. formerly known as All Purpose Float Services and Donald E. Parks and Luella Parks (Respondents) (*Terminated*)

**3570-94-R:** Labourers' International Union of North America, Local 527 (Applicant) v. Denis Brisbois Contractor (1992) Limited, Denis Brisbois Contractor Limited, Denis Brisbois Holdings Limited, 1091857 Ontario Inc. operating as Brisbois Contractors (Respondents) (*Granted*)

**4223-94-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 2837099 Canada Inc., a.k.a. Convent Glen Electric Ltd., Marois Electric (1980) Limited/Marois Electrique (1980) Limitee, Jack Laroche, c.o.b. as Eastech Electric (Respondents) (*Withdrawn*)

**4228-94-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Granville Constructors Ltd. and Ravico Contracting Ltd. (Respondents) (*Granted*)

**4625-94-R:** Ontario Public Service Employees Union (Applicant) v. St. Mary's of the Lake Hospital (Respondent) v. Kingston General Hospital, Association of Allied Health Professionals: Ontario, The Religious Hospitallers of Saint Joseph of the Hotel Dieu of Kingston (Hotel Dieu Hospital), Employees' Association, St. Mary's of the Lake Hospital, Canadian Union of Public Employees and its Local 1974 (Intervenors) (*Granted*)

**0257-95-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Draft Masonry (York) Company Limited, Draft Bricklayers Ltd., La Torre Masonry Limited, Roton Investments Limited, 952154 Ontario Limited and Geometric Masonry Limited (Respondents) (*Endorsed Settlement*)

**1126-95-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Contract Cable Toronto Inc. and/or Phasecom Systems Inc. (Respondent) (*Withdrawn*)

**1485-95-R:** International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Karl Harm Limited, Franlynn Installations Limited (Respondents) (*Terminated*)

**1586-95-R:** Labourers' International Union of North America, Local 527 (Applicant) v. The McBride Group Inc., 686758 Ontario Limited c.o.b. as Colonial Building Restoration (Respondents) (*Withdrawn*)

**2288-95-R:** IBEW Construction Council of Ontario (Applicant) v. 697235 Ontario Limited c.o.b. as Northview Electrical Contractors and/or Karlin Investments Ltd. and/or Columbus Electric (Respondents) (*Endorsed Settlement*)

**2323-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. J-AAR Excavating Limited and 756949 Ontario Ltd. (Respondents) (*Withdrawn*)

**2612-95-R:** The International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Rowilco Inc. c.o.b. as All-Pro Contractors and Performance Electrical Contractors Ltd. (Respondents) (*Endorsed Settlement*)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**2341-95-R:** Ontario Secondary School Teachers' Federation (Applicant) v. Waterloo County Board of Education (Respondent) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0447-95-R:** Paul Beaulieu (Applicant) v. International Association of Heat and Frost Insulators and Asbestos Workers, and the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Respondent) v. Adam's Industrial Insulations Ltd. (Intervener)

Unit: "all journeymen and apprentice insulators and asbestos workers employed by Adam's Industrial Insulations Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario" (2 employees in unit) (*Dismissed*)

**0830-95-R:** Ross McLennan (Applicant) v. United Food and Commercial Workers International Union, Local 173-W (Respondent) v. Koch Transport Limited (Intervener)

Unit: "all employees of Koch Transport Limited, except: (a) office staff and solicitor salesmen; (b) dispatchers and salaried employees; (c) foremen and those above the rank of foreman" (85 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	98
Number of persons who cast ballots	84
Number of ballots marked in favour of respondent	23
Number of ballots marked against respondent	61
Number of names of persons on revised voters' list	100
Number of persons who cast ballots	82
Number of ballots marked in favour of respondent	17
Number of ballots marked against respondent	65

**2004-95-R:** Gail Sullivan (Applicant) v. Retail Wholesale Canada, Canadian Service Sector division of the United Steelworkers of America, Local 414 (Respondent) v. John Spina Drugs Limited c.o.b. Shoppers Drug Mart (Intervener)

Unit: "all employees of Robert Yan Ltd. c.o.b. as Shoppers Drug Mart in the City of Oshawa, save and except supervisors, persons above the rank of supervisor, bookkeeper and pharmacists" (22 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of ballots marked in favour of respondent	10
Number of ballots marked against respondent	13

**2379-95-R:** Timothy Nielson, John Bryan (Applicants) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its Local Union No. 141 (Respondent) v. Rodney Ambulance Service (Intervener) (*Granted*)



**2408-95-R:** Joe Henderson (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) v. UAP Inc. (Intervener) (*Withdrawn*)

**2506-95-R:** Registered Nurses of St. Charles Village Local 089 (Applicant) v. Ontario Nurses Association (Respondent) v. Lanwell Property Management Ltd. (Intervener) (*Withdrawn*)

**2526-95-R:** Robert Bradley McIlroy (Applicant) v. Canadian Security Union (Respondent) v. Intercon Security Ltd. (Intervener) (*Dismissed*)

**2552-95-R:** Eleanor Leatham (Applicant) v. Canadian Union of Public Employees Local 1150 (Respondent) v. The Board of Education for the City of London (Intervener) (*Withdrawn*)

## APPLICATIONS CONCERNING REPLACEMENT WORKERS

**2192-95-U:** Bricklayers and Masons' Union, Local No. 1, Ontario of the International Union of Bricklayers and Allied Craftsmen and The Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Narco Canada Inc. (Respondent) (*Withdrawn*)

**2193-95-U:** Bricklayers and Masons' Union, Local No. 1, Ontario of the International Union of Bricklayers and Allied Craftsmen and The Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Beatty Hall Construction (Respondent) (*Withdrawn*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**1617-90-U; 1830-90-U:** R. Carniel et al (Applicant) v. Steinberg Inc. (Miracle Food Mart Division) and The Great Atlantic And Pacific Company of Canada, Limited (Respondent); Teamsters Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Steinberg Inc. (Miracle Food Mart Division) and The Great Atlantic and Pacific Company of Canada Limited (Respondents) (*Dismissed*)

**2865-92-U:** William Hill Jr. (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938 (Respondent) (*Dismissed*)

**1741-93-U:** International Brotherhood of Electrical Workers, Local Union 1788 (Applicant) v. Abroyd Communications Limited, John Verlis, Electrical Power Systems Construction Association, and Ken Spracklin (Respondents) v. International Association of Bridge, Structural and Ornamental Iron Workers (Intervener) (*Withdrawn*)

**3106-93-U:** Stephen Grimstead et al (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 527 and Ontario Hydro and Electrical Power Systems Construction Association (Respondents) (*Dismissed*)

**0989-94-U; 1817-95-U:** IWA-Canada, Local 1-2693, (Applicant) v. Isadore Roy Limited and Burt Roy and Isadore Roy, (Respondent); IWA-Canada, Local 1-2693 (Applicant) v. Isadore Roy Limited (Respondent) (*Withdrawn*)

**1293-94-U:** Fitzgerald Williams (Applicant) v. National Automobile Aerospace, Transportation and General Workers Union Local 112 (Respondent) v. Woodbridge Foam Corporation (Intervener) (*Dismissed*)

**2811-94-U:** Gaetane Parps (Applicant) v. Ontario Nurses Association Local 162 and Etobicoke General Hospital (Respondents) (*Dismissed*)

**3216-94-U:** John Philip Serdar (Applicant) v. Power Workers Union, CUPE Local 1000 and (Respondent) v. Ontario Hydro (Intervener) (*Dismissed*)

**3258-94-U:** David Whyte (Applicant) v. The Society of Ontario Hydro Professional and Administrative Employees and Ontario Hydro (Respondents) (*Dismissed*)

**3426-94-U:** Gisberto Taranto (Applicant) v. The North York Foremen's Association Local 711 (Respondent) v. The Corporation of the City of North York (Intervener) (*Dismissed*)

**3733-94-U:** Zareena Husain (Applicant) v. Ontario Nurses' Association (Respondent) v. St. Michael's Hospital (Intervener) (*Dismissed*)

**4234-94-U:** Marjorie Long (Applicant) v. Lester Yearwood, Grievance Officer, Ontario Public Service Employees Union (Respondent) v. The Regional Municipality of Halton (Allendale Nursing Home) (Intervener) (*Withdrawn*)

**4243-94-U:** Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees and Restaurant Employees International Union and Hotel Employees and Restaurant Employees International Union (Applicant) v. Hospitality, Commercial and Service Employees Union of Canada and Don Campbell (Respondent) (*Withdrawn*)

**4250-94-U:** Canadian Union of Public Employees and its Local 1263 (Applicant) v. Regional Municipality of Niagara (Homes for Senior Citizens) (Respondent) (*Withdrawn*)

**4276-94-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Reynolds-Lemmerz Industries (Respondent)

**4302-94-U:** Guillaume Kibale (Applicant) v. l'Association des professeur(e)s à temps partiel de l'Université d'Ottawa (Respondent) v. L'Université d'Ottawa (Intervener) (*Dismissed*)

**4629-94-U; 4639-94-U:** Carole Hewlett, Kay Page, Bob Knox, Diane Millar, Blake Payne, Fred Wallis, Susan Clitheroe, Deborah Quail, Linda Clark (Applicants) v. United Steelworkers of America (Respondent) v. Birchmere Retirement Residence (Intervener); Mrs. Deanna Payne (Applicant) v. United Steelworkers of America (Respondent) v. Birchmere Retirement Residence (Intervener) (*Dismissed*)

**4647-94-U:** Ronald Douglas (Applicant) v. Columbia MBF and Teamsters Local 847 (Respondents) (*Withdrawn*)

**0249-95-U:** Neal C. Marin (Applicant) v. Harry S. Dhanda - President (Respondent) (*Withdrawn*)

**0484-95-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Contract Cable Toronto Inc. (Respondent) (*Withdrawn*)

**0550-95-U:** Betty Spence, Apolonia Fernandes, Cathy Holmes, Rina Putzu, Josie Policelli, Maureen Shepherd (Applicants) v. Gary Harrison, President Local 521 and Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario, as represented by Management Board of Cabinet (Intervener) (*Dismissed*)

**0794-95-U:** Labourers' International Union of North America, Local 1267 (Applicant) v. Amcan Castings Limited (Respondent) (*Withdrawn*)

**0904-95-U:** Gail Ritchie (Applicant) v. Ontario Nurses' Association (Respondent) (*Withdrawn*)

**0913-95-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Atlantic Packaging Products Ltd. (Respondent) (*Terminated*)

**0931-95-U:** Ontario Public Service Employees Union (Applicant) v. Crown in Right of Ontario as represented by Management Board of Cabinet (Respondent) (*Withdrawn*)

**0957-95-U:** John Derrick Reischer (Applicant) v. United Food and Commercial Workers International Union Local 1000A (Respondent) v. National Grocers Co. Ltd. (Intervener) (*Dismissed*)

**1127-95-U:** Hemlo Gold Mines Inc. o/a Golden Giant Mine (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**1131-95-U:** Drywall Acoustics Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Suburban Drywall & Acoustics Inc. (Respondent) (*Withdrawn*)

**1222-95-U:** Paul Christensen (Applicant) v. Hamilton Motion Picture Projectionists Union, Local 303 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Respondent) (*Terminated*)

**1287-95-U:** William J. Groulx (Applicant) v. Milk and Bread Driver, Dairy Employees Caterers and Allied Employees Local Union No. 647, Becker Milk Co., Becker Milk Company (Respondents) (*Withdrawn*)

**1327-95-U:** Ontario Public Service Employees Union and its Local 436 (Applicant) v. Ministry of Community and Social Services Rideau Regional Centre (home for the Developmentally Handicapped) (Respondent) (*Dismissed*)

**1530-95-U:** The Ontario Public Service Employees Union (Applicant) v. Trenton & District Association for Community Living (Respondent) (*Withdrawn*)

**1671-95-U:** Margitta Smith (Applicant) v. Service Employees Union Local 478, AFL-CIO, CLC (Respondent) v. Leisureworld Inc. (Intervener) (*Withdrawn*)

**1688-95-U:** IWA-Canada (Applicant) v. Green Forest Lumber Limited (Respondent) (*Withdrawn*)

**1690-95-U:** Canadian Union of Public Employees and its Local 2204 (Applicant) v. ABC Infant and Toddler Centre of Ottawa (Respondent) (*Withdrawn*)

**1716-95-U:** Ritva Aikia (Applicant) v. Ontario Secondary School Teachers Federation (O.S.S.T.F.) (Respondent) (*Dismissed*)

**1724-95-U:** Service Employees Union Local 268 affiliated with the S.E.I.U., AF of L., C.I.O. & C.L.C. (Applicant) v. Robin's Foods Inc. (Respondent) (*Withdrawn*)

**1818-95-U:** Zvonko Forjan (Applicant) v. St. Lawrence Cement, Inc. and Cement, Lime, Gypsum and Allied Worker's Division of the Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers AFL-CIO-CFL (Respondents) (*Withdrawn*)

**1831-95-U:** Vladimir Rogovsky & Colleagues (Applicant) v. Amalgamated Transit Union, Local #1572 (Respondent) (*Withdrawn*)

**1922-95-U:** Laundry & Linen Drivers and Industrial Workers Local 847 affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Salvation Army Metropolitan Toronto Recycling Centre, Mississauga Thrift Store (Respondent) (*Withdrawn*)

**1939-95-U:** Bonnie Armstrong-Tubman (Applicant) v. Canadian Auto Workers and The Communication, Energy and Paper Workers Union of Canada and its Local C.U.L.R. Local - 1 (Respondents) v. Canadian Labour Congress (Intervener) (*Dismissed*)

**1947-95-U:** Colleen St. George (Applicant) v. Service Employees Union, Local 478 (Respondent) v. Leisureworld Inc. (Intervener) (*Dismissed*)

**1955-95-U:** United Steelworkers of America (Applicant) v. Cinram Ltd. (Respondent) (*Withdrawn*)



- 1962-95-U:** Donna White (Applicant) v. United Food and Commercial Workers (Respondent) (*Dismissed*)
- 2020-95-U:** The Westin Harbour Castle Hotel (Applicant) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Respondent) (*Withdrawn*)
- 2030-95-U:** Anna Maria Triestino, Giuseppina Palombi, Angelina Dadd'Ario (Applicant) v. A.C.T.W.U. - Local 836 (Respondent) (*Withdrawn*)
- 2038-95-U:** United Steelworkers of America (Applicant) v. Woodstock 401 Service Centre Inc. (Respondent) (*Withdrawn*)
- 2040-95-U:** United Brotherhood of Carpenters and Joiners of America, Local 2000 (Applicant) v. Commonwealth Plywood Co. Ltd. (Respondent) (*Withdrawn*)
- 2095-95-U; 2110-95-U:** Labourers' International Union of North America, Local 1059 (Applicant) v. Robert Kelso c.o.b. H & R Contracting (Respondent); International Union of Bricklayers and Allied Craftsmen, Local 5 (Applicant) v. Robert Kelso c.o.b. H & R Contracting (Respondent) (*Withdrawn*)
- 2109-95-U:** David L. Nind (Applicant) v. Teamsters Local 879 (Respondent) v. Columbian Chemicals Canada Ltd. (Intervener) (*Withdrawn*)
- 2144-95-U:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. The Westin Harbour Castle Hotel (Respondent) (*Withdrawn*)
- 2153-95-U:** IWA - Canada (Applicant) v. Green Forest Lumber Limited (Respondent) (*Withdrawn*)
- 2159-95-U:** Service Employees International Union Local 204 (Applicant) v. Shelburne Residence (Respondent) (*Withdrawn*)
- 2162-95-U:** International Association of Heat and Frost Insulators and Asbestos Workers Local 95 (Applicant) v. All Ports Insulations & Asbestos Service Ltd. (Respondent) (*Withdrawn*)
- 2174-95-U:** Rose Forde (Applicant) v. Local No. 1, Canadian Union of Public Employees (Respondent) v. The Toronto Electric Commissioners (Intervener) (*Withdrawn*)
- 2175-95-U:** Ernest Wm. Barnett (Applicant) v. Bakery, Confectionery and Tobacco Workers International Union Local 264 (Respondent) v. Ingram & Bell Inc. (Intervener) (*Withdrawn*)
- 2204-95-U:** United Steelworkers of America (Applicant) v. Hurley Corporation (Respondent) (*Withdrawn*)
- 2233-95-U:** Francesco Nunez (Applicant) v. Steelworkers Union 8233 (Respondent) v. Canada Pipe Company Ltd. (Intervener) (*Dismissed*)
- 2245-95-U:** IWA - Canada (Applicant) v. Dynamic & Proto Circuits Inc. (Respondent) (*Withdrawn*)
- 2249-95-U:** Brian McRae (Applicant) v. Canadian Auto Workers Local 1132 and Joan Beuerman (Respondents) (*Withdrawn*)
- 2325-95-U:** United Food and Commercial Workers International Union, Locals 175 and 633 (Applicant) v. Executive Maintenance Services (Respondent) (*Withdrawn*)
- 2365-95-U:** United Food and Commercial Workers International Union (Applicant) v. Larsen Transfer of Sudbury Limited (Respondent) (*Endorsed Settlement*)
- 2372-95-U:** International Union of Bricklayers and Allied Craftsmen, Local 2, Ontario (Applicant) v. Canadian Tire Petroleum Division a division of Canadian Tire Corporation Limited (Respondent) (*Withdrawn*)

**2377-95-U; 2378-95-U; 2469-95-U:** London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Liffey Custom Coatings Inc. (Respondent) (*Withdrawn*)

**2391-95-U:** Robert Starr, Bill Lucyk, Mark Petutis, Brian Robertson (Applicant) v. George Knotts, Terry Wilson, CAW, Local 222 (Respondent) (*Dismissed*)

**2395-95-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Towland-Hewitson Construction Limited (Respondent) (*Withdrawn*)

**2402-95-U:** The Ontario Nurses' Association (Applicant) v. Victorian Order of Nurses, Waterloo Region Branch (Respondent) (*Withdrawn*)

**2447-95-U:** Dynamic & Proto Circuits Inc. (Applicant) v. IWA - Canada (Respondent) (*Withdrawn*)

**2456-95-U:** Lloyd Smythe (Applicant) v. Liftking Inc. (Respondent) (*Withdrawn*)

**2459-95-U:** Larsen Transfer of Sudbury Limited (Applicant) v. United Food and Commercial Workers International Union (Respondent) (*Endorsed Settlement*)

**2460-95-U:** Retail Wholesale Canada, Canadian Service Sector Division of The United Steelworkers of America (Applicant) v. Aboutown Cabs Limited (Respondent) (*Withdrawn*)

**2477-95-U:** Ontario Public Service Employees Union (Applicant) v. North Halton Association for the Developmentally Handicapped (Respondent) (*Endorsed Settlement*)

**2493-95-U:** United Food and Commercial Workers International Union (Applicant) v. Beaumen Waste Management (Respondent) (*Terminated*)

**2501-95-U:** United Food and Commercial Workers International Union, Locals 175 and 633 (Applicant) v. Unique Communications Inc. (Respondent) (*Withdrawn*)

**2510-95-U:** Independent Canadian Transit Union and its Local 6 (Applicant) v. The Westin Hotel (Ottawa) (Respondent) (*Withdrawn*)

**2515-95-U:** David Caldwell (Applicant) v. CAW Local 222 and General Motors of Canada (Respondents) (*Dismissed*)

**2523-95-U:** Francisco Garcia (Applicant) v. Royal Forming Ltd./Star Wall Ltd. (Respondents) (*Dismissed*)

**2549-95-U:** Millicent Dixon (Applicant) v. Northwestern General Hospital (Respondent) (*Dismissed*)

**2558-95-U:** Garry Callahan (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**2575-95-U:** OPSEU Local #431 (Applicant) v. Kingston Psychiatric Hospital, Ministry of Health (Ontario) (Respondent) (*Dismissed*)

**2576-95-U:** Hung Van Nguyen (Applicant) v. CAW Local 2163 - Unit #1 (Respondent) (*Withdrawn*)

**2592-95-U:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Cooper Plating Inc. (Respondent) (*Withdrawn*)

**2617-95-U:** Steve Tajti (Applicant) v. Bertrand Faure Ltd. (Respondent) (*Dismissed*)

**2631-95-U:** Jim Campbell U.A.W. #44178 (Applicant) v. General Motors of Oshawa & U.A.W. Oshawa, Local 222 (Respondents) (*Dismissed*)

**2666-95-U:** Robert Starr, et al (Applicant) v. George Knotts, Terry Wilson, CAW Local 222 (Respondent) (*Withdrawn*)

**2681-95-U:** Donald K. MacKinnon (Applicant) v. Chicopee Manufacturing Employees' Association (Respondent) (*Withdrawn*)

**2710-95-U:** Abdirazaq Mustafa (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent) (*Dismissed*)

**2711-95-U:** Firoz Ramji (Applicant) v. Westbury Howard Johnson Plaza Hotel (Respondent) (*Dismissed*)

**2720-95-U:** Roland Parisee (Applicant) v. International Union of Operating Engineers and International Union of Operating Engineers, Local 793 (Respondent) (*Dismissed*)

**2749-95-U:** The union members of Unique Communications Inc. (Applicant) v. United Food and Commercial Workers International Union Local #: 175 and 633 (Respondent) (*Dismissed*)

**2750-95-U:** Albert Marcella (Applicant) v. C.A.W.-Canada and Lockwood Manufacturing (Respondents) (*Dismissed*)

**2761-95-U:** Patricia Mae Gordon (Applicant) v. Service Employees' International Union Local 204, Women In Transition (Respondents) (*Dismissed*)

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**2161-95-M:** Harold Bartlett, William Gilroy, John Ives, Thomas MacLean, Judy Mitchell, Joseph Mulhall, John Sprackett, Fraser Strong, Ashton Tuck and John Wabb (Applicants) v. International Brotherhood of Electrical Workers, Ken Woods, J.J. Barry, Tom McGreevy, Al Diggon and International Brotherhood of Electrical Workers, Local Union 1788, by its trustee, International Brotherhood of Electrical Workers and Ken Woods (Respondents) v. Ontario Hydro (Intervener) (*Dismissed*)

**2364-95-M:** Dynamic & Proto Circuits Inc. (Applicant) v. IWA - Canada (Respondent) (*Dismissed*)

**2435-95-M:** United Steelworkers of America (Applicant) v. Pillar Plastics Limited (Respondent) (*Endorsed Settlement*)

**2461-95-M:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America (Applicant) v. Aboutown Transportation Limited (Respondent) (*Granted*)

**2492-95-M:** United Food and Commercial Workers International Union AFL/CIO C.L.C. (Applicant) v. Beaumen Waste Management Systems Ltd. (Respondent) (*Dismissed*)

**2519-95-M:** Labourers' International Union of North America, Ontario Provincial District Council, Labourers International Union of North America, Local 1267 (Applicant) v. Amcan Microprecision Die Casting Inc., Cascade Precision Machining Ltd., Amcan Castings Limited (Respondents) (*Endorsed Settlement*)

**2591-95-M:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Cooper Plating Inc. (Respondent) (*Withdrawn*)

**2608-95-M:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Albula Construction Inc. and Ralph Allegritti (Respondent) v. Filipuzzi Masonry Ltd. (Intervener) (*Dismissed*)

**2698-95-M:** London and District Service Workers' Union, Local 220 (Applicant) v. Kitchener-Waterloo Habilitation Services (Respondent) (*Endorsed Settlement*)



**2743-95-M:** Labourers International Union of North America, Local 183 (Applicant) v. Ogden Allied Services Inc. (Respondent) (*Withdrawn*)

**2747-95-M:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 40 (Applicant) v. Gentry Knitting Mills Ltd. (Respondent) (*Withdrawn*)

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**1717-95-U:** Ritva Aikia (Applicant) v. Ontario Secondary School Teachers Federation (O.S.S.T.F.) (Respondent) (*Dismissed*)

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**0381-94-M:** Arend E. Smid (Applicant) v. Ontario Public Service Employees Union and Ontario Ministry of Agriculture and Food (Respondents) (*Granted*)

**1230-95-M:** Robert John Watson (Applicant) v. Ontario Public Service Employees Union, Crown in Right of Ontario Management Board of Cabinet, Ministry of Community & Social Services, Rideau Regional Centre (Respondents) (*Withdrawn*)

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**2283-95-M:** Maple Leaf Gardens Limited (Employer) v. Laundry and Linen Drivers and Industrial Workers Union Local 847 (Trade Union) (*Granted*)

**2490-95-M:** Work Wear Corporation of Canada Ltd. (Employer) v. Textile Processors, Service Trades, Health Care, Professional And Technical Employees International Union, Local 351 (Trade Union) (*Granted*)

**2565-95-M:** Maple Leaf Gardens, Limited (Employer) v. Laundry and Linen Drivers and Industrial Workers Union Local 847, affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Trade Union) (*Granted*)

**2566-95-M:** Work Wear of Canada Inc. (Employer) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Trade Union) (*Granted*)

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**2002-95-JD:** Ontario Sheet Metal Workers' & Roofers' Conference, Sheet Metal Workers' International Association, Local 537 (Applicant) v. SMC Installations, United Brotherhood of Carpenters' and Joiners' of America, Local 18 (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

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**1456-95-M:** Queensway Carleton Hospital (Applicant) v. Ontario Nurses' Association (Respondent) (*Endorsed Settlement*)

**2052-95-M:** Association of Allied Health Professionals: Ontario (Applicant) v. St. John's Rehabilitation Hospital (Respondent) (*Terminated*)

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**1894-95-OH:** William Joseph Palmer (Applicant) v. Standard Products (Canada) Limited (Respondent) (*Dismissed*)

**2147-95-OH:** John Cheresna (Applicant) v. Les Constructions H.G.B. Inc. (Respondent) (*Granted*)

**2156-95-OH:** Steven Castrillo (Applicant) v. Mike Elik Limited, Canadian Tire #346 (Respondent) (*Withdrawn*)

**2491-95-OH:** United Food and Commercial Workers International Union (Applicant) v. Beaumen Waste Management (Respondent) (*Terminated*)

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**1195-91-G; 1442-91-G:** Labourers' International Union of North America on its own behalf and on behalf of its affiliated Local Unions in Ontario (Applicant) v. Nicholls Radtke Ltd., Marine-Banister (A Joint Venture) and Pipe Line Contractors Association of Canada (Respondents); International Union of Operating Engineers and its Local 793 (Applicant) v. Marine Pipeline Construction of Canada Limited, Nicholls Radtke Ltd., Pipe Line Contractors Association of Canada (Respondents) (*Dismissed*)

**2069-93-G; 2070-93-G:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Bradsil Limited, Bradsil (1967) Limited, Bradsil (1980) Limited, Bradsil Leaseholds Limited, Bradscot Construction Limited, Bradscot Limited, Bradscot Management Limited, Bradscot Western Limited, Bradscot Northern Limited, and Bradscot (MCL) Ltd. (Respondents) (*Endorsed Settlement*)

**3347-93-G:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Vision Masonry Inc. (Respondent) (*Granted*)

**4376-93-G; 3423-94-G:** Teamsters Union Local 990 affiliated with International Brotherhood of Teamsters formerly known as International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. 656934 Ontario Ltd. c.o.b. as 1st Machinery Movers (Respondent) (*Endorsed Settlement*)

**0120-94-G:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Morell Electric Ltd. and 694643 Ontario Limited c.o.b. as O'Connor Electric (Respondents) (*Dismissed*)

**0800-94-G:** International Brotherhood of Electrical Workers, Local Union 303 (Applicant) v. Adam Clark Limited (Respondent) (*Endorsed Settlement*)

**4204-94-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 71, Mike Ring, Ron McGrogan and Frank Kennedy (Applicant) v. D.R. Francis Plumbing Ltd. (Respondent) (*Endorsed Settlement*)

**4222-94-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 2837099 Canada Inc., a.k.a. Convent Glen Electric Ltd., Marois Electric (1980) Limited/Marois Electrique (1980) Limitee, Jack Laroche, c.o.b. as Eastech Electric (Respondents) (*Withdrawn*)

**4560-94-G; 0256-95-G:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Draft Bricklayers Ltd., Draft Masonry (York) Company Limited, La Torre Masonry Limited, Roton Investments Limited, 952154 Ontario Limited and Geometric Masonry Limited (Respondents) (*Endorsed Settlement*)

**0072-95-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Adam's Industrial Insulations Ltd. (Respondent) (*Endorsed Settlement*)

**0524-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Avery Construction Limited (Respondent) (*Withdrawn*)

**0786-95-G:** Local 787, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Black & McDonald Limited (Respondent) (*Withdrawn*)

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**1811-95-G:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. 791306 Ontario Inc. carrying on business as Interior Projects (Respondent) (*Granted*)

**1959-95-G:** Teamsters Local Union No. 230 affiliated with the International Brotherhood of Teamsters (Applicant) v. Lefarge Construction Materials, a Division of Lefarge Canada Inc. (Respondent) (*Withdrawn*)

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**2036-95-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Century Interiors Inc. (Respondent) (*Granted*)

**2122-95-G:** International Brotherhood of Painters and Allied Trades Local 1824 (Applicant) v. Douglas Pestell Custom Decorations (Respondent) (*Endorsed Settlement*)

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**2527-95-G:** Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1671 (Applicant) v. Johnson Painting (Thunder Bay) Ltd. (Respondent) (*Endorsed Settlement*)

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400 University Avenue,  
Toronto, Ontario  
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ISSN 0383-4778





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# ONTARIO LABOUR RELATIONS BOARD REPORTS

December 1995



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A Monthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1995] OLRB REP. DECEMBER

EDITOR: RON LEBI

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also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.



Typeset, Printed and Bound by Union Labour in Ontario





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- RESIDENTIAL LOW RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY, THE; RE LIUNA, LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; TORONTO HOUSING LABOUR BUREAU; ONTARIO FORMWORK ASSOCIATION; RESIDENTIAL FRAMING ASSOCIATION; AND ONTARIO CONCRETE & DRAIN CONTRACTORS ASSOCIATION ..... 1471

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TORONTO DOMINION BANK; RE CJA, LOCAL 2050 ..... 1500

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Jurisdictional Dispute - Construction Industry - IBEW and Labourers' union disputing assignment of certain hand digging and backfilling work at base of transmission towers during course of line refurbishment project - Board confirming assignment to IBEW on basis of economy and efficiency and because other factors considered not favouring one union or the other

ONTARIO HYDRO, EPSCA AND; RE IBEW, LOCAL 1788 AND LIUNA, LOCAL 1059.....

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ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894....

1506

Parties - Construction Industry - Construction Industry Grievance - Practice and Procedure - Union grieving alleged improper pay for overtime work - Board exercising its discretion to permit Metropolitan Toronto Road Builders Association ("MTRBA") to intervene in referral of grievance to arbitration so as to avoid multiple proceedings and to bind MTRBA and its members to Board's decision

CANADIAN HIGHWAYS INTERNATIONAL CONSTRUCTORS; RE IUOE, LOCAL 793; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION ..

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HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 .....

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Practice and Procedure - Accreditation - Bargaining Unit - Construction Industry - Residential Low Rise Forming Contractors Association applying for accreditation - Applicant and Local 183 of Labourers' union agreeing on appropriate bargaining unit - Board finding unit appropriate despite objections of Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau - Board setting "employer date" and



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RESIDENTIAL LOW RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY, THE; RE LIUNA, LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; TORONTO HOUSING LABOUR BUREAU; ONTARIO FORMWORK ASSOCIATION; RESIDENTIAL FRAMING ASSOCIATION; AND ONTARIO CONCRETE & DRAIN CONTRACTORS ASSOCIATION .....

1471

Practice and Procedure - Arbitration - Crown Employees Collective Bargaining Act - Unfair Labour Practice - Board declining to defer unfair labour practice complaint dealing with abolition of certain positions to Grievance Settlement Board

CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, THE; RE OPSEU .....

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SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD. C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION .....

1475

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Reconsideration - Duty of Fair Representation - Parties - Remedies - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor’s discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed

HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 .....

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Remedies - Duty of Fair Representation - Parties - Reconsideration - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor’s discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed

HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 .....

1437

Termination - Certification - Crown Employees Collective Bargaining Act - Association of Law Officers of the Crown (“ALOC”) applying to represent articling students employed in

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**2331-95-G International Union of Operating Engineers, Local 793, Applicant v. Canadian Highways International Constructors, Responding Party v. Metropolitan Toronto Road Builders Association, Intervenor**

**Construction Industry - Construction Industry Grievance - Parties - Practice and Procedure - Union grieving alleged improper pay for overtime work - Board exercising its discretion to permit Metropolitan Toronto Road Builders Association ("MTRBA") to intervene in referral of grievance to arbitration so as to avoid multiple proceedings and to bind MTRBA and its members to Board's decision**

**BEFORE:** *Lee Shouldice*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *S. Wahl* and *M. Gallagher* for the applicant; *D. Bannon*, *J. Hanson* and *J. Hassell* for the responding party; *J. Liberman* for the intervenor.

**DECISION OF THE BOARD;** December 21, 1995

**I. Introduction**

1. This is a referral of a grievance in the construction industry to arbitration, pursuant to what is now section 133 of the *Labour Relations Act, 1995* ("the Act"). On October 11 and 12, 1995, the Board entertained argument from counsel for the applicant, responding party, and the Metropolitan Toronto Road Builders Association (hereinafter the "MTRBA") on the preliminary issue of whether the MTRBA ought to be provided with status to intervene in this proceeding. The factual basis for the argument heard by the Board consisted of fourteen exhibits entered by the participants, and the testimony of Michael Gallagher, the Labour Relations Manager of the applicant (hereinafter "Local 793").

**II. The Facts**

2. It is appropriate at this stage to briefly set out the facts upon which this preliminary issue was argued. The grievance underlying this application relates to work being performed on what will be referred to as "the Highway 407 project". Highway 407 is a controlled access toll highway which is currently being constructed between Highways 403 and Highway 48 in South-Central Ontario. Boiled down to its most fundamental elements, the grievance alleges that the responding party (hereinafter "CHIC") has not properly paid members of Local 793 for certain overtime work performed on the project.

3. The terms and conditions of employment on the Highway 407 project (as they relate to Local 793, at the very least) are governed by a Project Agreement dated February 28, 1995 which binds CHIC, Local 793, Labourers' International Union of North America, Local 183, and International Brotherhood of Teamsters, Local 230. It should be noted here that there is no dispute that CHIC is a joint venture of four road builders: Monenco AGRA Inc., Armbro Holdings Inc., Dufferin Construction Company and The Foundation Company Inc.

4. The Government of Ontario has contracted with Canadian Highways International Corporation to develop the Highway 407 project. In turn, Canadian Highways International Corporation let a contract for the exclusive performance of all work during construction on the Highway 407 project to CHIC. By way of a Letter of Intent executed on January 10, 1994 by the three above-noted unions and CHIC, the parties to that Letter of Intent indicated a desire to promote a construction project agreement governing the terms and conditions for employment on the High-



way 407 project. The Letter of Intent has appended to it a Schedule "A" which sets out various collective agreements to which the three unions are individually a signatory (including that between "The Metropolitan Toronto Road Builders Association and the International Union of Operating Engineers, Local 793 in effect from time to time"). The Letter of Intent further provides that CHIC "agrees to recognize and be bound by" the collective agreements listed in Schedule "A", and that all work on the Highway 407 project will be performed by contractors and/or subcontractors who are bound by the collective agreements therein listed.

5. The Letter of Intent expressly states that the parties to that Letter will enter into a Project Agreement containing, amongst other things, certain modifications respecting the collective agreements contained in Schedule "A" to the Letter. The Letter of Intent reflects an expectation that the Project Agreement would be entered into on or before February 15, 1994. As noted above, a Project Agreement was subsequently entered into by the parties to the Letter of Intent, although not by February 15, 1994. The Project Agreement, rather than reflecting that CHIC "recognizes and is bound by" the Schedule "A" collective agreements, states only that all work on the Highway 407 project will be performed under the Project Agreement, and that all of the terms and conditions in the Schedule "A" collective agreements "are incorporated and form part of this Project Agreement" with the amending modifications contained in the Project Agreement. One of the modifications in question relates to make-up time, and is raised, in part, by the grievance before the Board.

6. The Project Agreement itself is effective from February 28, 1995, to April 30, 2000, and continues from year to year thereafter unless either party serves a notice to bargain within 60 days prior to April 30, 2000, or any anniversary thereof. Furthermore, the Project Agreement specifically lays out the hourly construction labour costs for the Highway 407 project. These costs are, in essence, the current costs under the Schedule "A" agreements, as amended from time to time, with certain percentage cap increases through to April 30, 2000. A Letter of Understanding appended to the Project Agreement states that any terms and/or conditions of employment that are negotiated as part of any Schedule "A" agreement which treat the Highway 407 project less favourably than other construction work covered by that collective agreement will not form part of the Highway 407 Project Agreement.

7. As noted above, the Board heard testimony from Mr. Michael Gallagher, Labour Relations Manager of Local 793. Mr. Gallagher testified that during the negotiations leading up to the signing of the Project Agreement, CHIC indicated a desire not to be bound by the Schedule "A" collective agreements, including the MTRBA collective agreement. Mr. Gallagher stated that CHIC negotiators were concerned that the MTRBA could successfully challenge the Project Agreement if CHIC specifically agreed to be bound by the MTRBA agreement. In fact, the MTRBA did refer a grievance to the Board for arbitration on October 17, 1994 (Board File 2526-94-G), in which it grieves that the three unions violated the respective collective agreements between them and the MTRBA by negotiating on an individual basis with its members (in particular, Dufferin Construction Company and The Foundation Company of Canada Limited, two of the four companies that are partners in the CHIC joint venture). An unfair labour practice complaint based on the same facts was also filed with the Board by the MTRBA (Board File 2652-94-U). Both of these proceedings were withdrawn, with leave of the Board and at the request of the MTRBA, by way of a decision dated June 7, 1995.

8. In cross-examination Mr. Gallagher conceded that the Highway 407 project was predominately a road building project, and that the MTRBA collective agreement would be the predominate collective agreement applied on the project. He also concurred with counsel for the MTRBA that the collective agreement negotiations between Local 793 and the MTRBA for a renewal

agreement were completed by way of a Memorandum of Agreement prior to the MTRBA's request for withdrawal of its Board proceedings in June, 1995. The renewal agreement contains a Letter of Understanding which provides that, if Local 793 enters into discussions with any employer not bound to the MTRBA collective agreement for work on special projects, which discussions may result in the signing of an agreement which contains more favourable terms than those in the MTRBA agreement, then Local 793 is to consult with the MTRBA prior to signing any such agreement or other document which may lead to such an agreement. Mr. Gallagher confirmed that the Letter of Understanding was a means of settling the grievance and unfair labour practice complaints filed by the MTRBA against the unions.

9. Mr. Gallagher also agreed that the difference in wording between the Letter of Intent and the Project Agreement respecting the relationship between CHIC and the Schedule "A" collective agreements did not affect how Local 793 treated CHIC; and that Local 793 expects CHIC to observe all the terms of the MTRBA collective agreement (as modified) as if it were bound to the collective agreement. It was conceded that CHIC was treated no differently by Local 793 than any other company bound to the MTRBA agreement. Further, it was the testimony of Mr. Gallagher that construction on the Highway 407 project commenced in the summer of 1994, that CHIC was operating during the summer of 1994, and that it voluntarily observed the terms of the MTRBA agreement with Local 793, until Local 793 executed the Project Agreement in February, 1995.

10. On the basis of the above evidence, the issue of the granting of status to the MTRBA was argued before the Board.

### III. Decision

11. A large number of cases were provided to the Board during argument. In our view, the applicable principles are outlined in the Board's decision of *Ontario Hydro*, [1986] OLRB Rep. May 663, at paragraphs 19 to 24, which read as follows:

19. This Board is not a court with an inherent jurisdiction to deal with any legal dispute which may exist between the parties who appear before it. The Board derives its jurisdiction from the *Labour Relations Act*, which provides in subsection 102(13) that:

(13) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

Section 79 of the Board's Rules of Procedure, R.R.O. 1980, Reg. 546, provides:

79. The Board may direct that any person be added as a party to a proceeding or be served with any document, as the Board considers advisable.

Although on a referral under section 124 the Board acts as "an arbitrator to which ... the *Labour Relations Act* applies" within the meaning of section 3(2)(d) of the *Statutory Powers Procedure Act*, R.S.O. 1980 c. 484, the Board's jurisdiction and procedure are still determined by those provisions of the *Labour Relations Act* and Rules of Procedure which govern the Board's proceedings generally: *Re International Association of Heat & Frost Insulators & Asbestos Workers Local 95 and Master Insulators Association of Ontario et al.* (1979), 25 O.R. (2d) 8 (Ont. Div. Ct.), and *Ontario Erectors Association et al v. International Union of Operating Engineers, Local 793*, (1980) 2 A.C.W.S. (2d) 307 (Ont. Div. Ct.)

20. Section 79 of the Board's Rules of Procedure impose [sic] no express limit on the circumstances in which the jurisdiction to add a party may be exercised, leaving it entirely in the discre-



tion of the Board. This section of the Rules would be inapplicable to arbitration referrals only if it were inconsistent with the language of section 124 of the Act. There is no inconsistency. Section 124 requires that an applicant be a party to the collective agreement, but it is silent as to who may be a party respondent or intervener. As the Board observed in *Ontario Hydro*, [1978] OLRB Rep. Mar. 304 at paragraph 7:

7. ... It is well settled that a person whose interests may be directly and adversely affected by an adjudication in respect of a collective agreement is a proper party to those proceedings notwithstanding that he may not, strictly speaking, be one of the two parties to the collective agreement. In that circumstance a board of arbitration has a duty to give notice of its proceedings to the person or company in question and to afford them a full opportunity to participate. (*Re Bradley and Ottawa Professional Fire Fighters Ass'n*, (1967) 63 DLR (2d) 376 (Ont. C.A.), *Re Hoogendoorn and Greening Metal Products and Screening Equipment Co.*, (1968) 65 DLR (2d) 641 (S.C.C.)) Thus the parties to a collective agreement and the parties to proceedings relating to that agreement need not always be one and the same. And that is so no less under section 112a [now s. 124] of The Labour Relations Act than in other arbitration proceedings.

In that case the Board held that Ontario Hydro was a proper party to a referral to arbitration of a grievance that Hydro had violated the provisions of a collective agreement between the Ontario Allied Construction Trades Council and EPSCA. The *Hoogendoorn* and *Bradley* cases illustrate that persons other than parties signatory to a collective agreement will have the right to participate in an arbitration thereunder if they are *bound* by the agreement and their own rights thereunder are *directly* in question and may be determined in the arbitration. There is no discretion in such cases to permit or deny standing as an intervener when it is sought by such persons - they are entitled to participate as of right. Since it involves the exercise of a discretion, the Board's power under section 79 of its Rules of Procedure obviously extends to persons other than those entitled to participate as of right. As we understood its submission, 3-L did not claim it had a right to standing but, rather, that we had a broad discretion to grant it standing - a discretion which we should exercise in their favour in the circumstances of this case.

21. While it was well understood by all involved, it is worth noting here that the undoubted right of either the applicant or the respondent to involve 3-L in these proceedings as a source of evidence relevant to the issues either of them raised before the Board was not in question here. The question raised by 3-L's motion was whether 3-L had or would be given the same right to participate as a party. Having regard to the analysis in *Napev #1* of which the Divisional Court approved and the similar analysis in the other Board decisions referred to earlier, we were and are satisfied that 3-L was not entitled to standing as of right. We were and are also satisfied that we did have a discretion to grant 3-L standing if we considered it appropriate to do so.

22. In deciding how to exercise its discretion to permit intervention by a person not entitled to intervene as of right, the Board must be sensitive to the nature and limits of the jurisdiction it exercises in the particular proceedings before it and, for that reason, cautious about drawing analogies with the courts' experience in exercising a facially similar discretion. One of the factors weighed by the courts in many of the cases cited by counsel for 3-L was that the effect on the proposed intervener of the result sought by one of the parties before the court might become the subject of subsequent legal proceedings in the same court involving the proposed intervener and one or more of the original parties; thus, by adding the proposed intervener the court could bind it to the result and so avoid a multiplicity of proceedings. The Board's permitting intervention in its proceedings could only avoid a multiplicity of proceedings if the potential proceedings involve matters within the Board's jurisdiction. As the Board's jurisdiction is considerably narrower than that of the courts, there will be a narrower range of cases in which avoidance of a multiplicity of proceedings can weigh in favour of granting intervener status. This is clearly not one of those cases, as 3-L took the position that this Board would have no jurisdiction to resolve any of the legal issues which would or might arise between it and Hydro should this referral be decided in the applicant's favour.

23. Apart altogether from the fact that we could not adjudicate the rights *inter se* of the respondent and proposed intervener if the latter were permitted to participate as a party in this proceeding, there are other important distinctions between the facts of this case and those in *Union*



*Natural Gas Co. v. Chatham Gas, supra.* There, the trial judgement enjoined the defendant from fulfilling its obligations under its contract with the sugar company which the appeal court ruled ought to be a party to the action. As the appeal court observed about the trial decision:

This adjudication virtually annuls the sugar company's agreement, or at all events deprives that company of any right to specific performance, and places it under such a disability that it cannot make an agreement with the defendants except by the permission of the Court...

Hydro's primary obligation to 3-L is not to supply goods, but to pay money. No decision the Board would or could make in this referral would enjoin Hydro from paying money to 3-L. It is hard to see how any such decision would deprive 3-L of a right (if it would otherwise have one) to specific performance or to any other remedy for breach by Hydro of its agreement with 3-L. In the *Union Natural Gas* case, the appeal court noted that the agreement between the defendant and the sugar company was not merely an agreement for the supply of natural gas generally but for the supply of the particular gas obtained by the defendant from the plaintiff pursuant to the terms of the agreement between the latter two parties. The terms of that agreement were recited in the defendant's contract with the sugar company, the defendant's obligation to supply gas under the latter contract was conditional on its being able to obtain it from the plaintiff pursuant to the terms of its agreement with the plaintiff and the sugar company's contract with the defendant gave it the right to act in the defendant's name to compel supply under the agreement between the defendant and the plaintiff. The appeal court observed that:

... these provisions distinguish this case from others in which it might be said that a contract for the supply of a commercial article between two parties may be attacked in litigation between them without bringing in a sub-purchaser or a person to whom the purchaser is to hand over the article bargained for under the contract. In that case the remedy would be in damages, and the sub-purchaser would be expected to go into the market and supply himself. Here, however, while such a course might be open and might be taken by the sugar company - see *Erie County Natural Gas and Fuel Co. v. Carroll*, [1911] A.C. 105 - the other rights given by the contract would entitle the sugar company to a larger remedy than mere damages. Besides this, if the learned trial Judge's view of the relations of the plaintiffs and defendants, as that of partners, is sustainable, then there is all the more reason why the outsider should be heard in his own interest, and not left in the lurch in the settlement of the partnership difference.

. . .

3-L's contract with Hydro is not intertwined in these ways with the collective agreement before us here. 3-L did not argue that its contractual or proprietary rights under or arising out of the performance of its contract with Hydro were in any way contingent on the scope of Hydro's collective agreement obligations. It may be that Hydro might cancel its contract with 3-L if this referral were decided in the applicant's favour, but that possibility exists independent of these proceedings, and it was not suggested that Hydro's obligations to 3-L upon cancellation would be altered by a Board decision in the applicant's favour.

24. Proceedings before this Board under section 124 were intended by the Legislature to be an analogue of the private arbitration process which section 44 of the Act requires be provided for in each collective agreement as the final mechanism for resolving disputes over its interpretation, application, administration or alleged violation. This arbitration process is intended to be private and expeditious. The concern for expedition is particularly reflected in the prompt hearing requirements of section 124. The need for expedition will ordinarily militate against permitting intervention by a third party not entitled to participate as of right. Common sense suggests, and experience confirms, that the time consumed in hearing a matter will increase if the number of participants increases, because the mechanics of conducting and even scheduling the hearing become more complex. The essential nature of grievance arbitration as a private system for dispute resolution also militates against permitting intervention by a third party not entitled to participate as of right.

26. Having regard to the nature of the grievance arbitration process, when sitting as an arbitra-

tion board under section 124 of the *Labour Relations Act*, this Board should not permit intervention by persons who are not entitled to standing as of right except when the special circumstances of the proposed intervenor make it desirable from a labour relations perspective to permit such intervention. No such circumstances were demonstrated here. Accordingly, by telegram dated November 14, 1984, the parties and 3-L were advised that, for reasons to be delivered at a later date, the application of 3-L Filters Limited for standing as an intervenor in the hearing of this arbitration referral was dismissed. These are the reasons then promised.

12. There are three separate bases which may support a person's participation in a referral of a grievance to arbitration pursuant to section 133 of the Act. First, the parties to the collective agreement in question are proper parties to an application under section 133 of the Act; there can be no doubt of that principle. Alternatively, a person may, as of right, be entitled to participate in a grievance referral if it is bound by the agreement and its own rights thereunder are directly in question and may be determined in the arbitration proceeding. In both of the above-noted situations the person desiring to participate is entitled to participate as of right, and there is no discretion in the Board to deny that person the opportunity to participate.

13. However, the Board, has, as well, retained the discretion to add parties to any particular proceeding if it determines that it is advisable to do so. As is evident from the decision of the Board in *Ontario Hydro, supra*, when exercising its discretion to add parties to a proceeding the Board must be cautious to exercise that discretion in a manner which recognizes the various competing interests at play, such as the desire to avoid a multiplicity of proceedings, and the necessity to ensure that grievance referrals made to the Board both commence and proceed in an expeditious and cost-effective fashion. As each and every case must be determined on its own factual base, the factors to be taken into account by the Board in deciding to exercise its discretion in favour of adding an intervenor to an application under section 133 of the Act cannot be (nor need they be) exhaustively listed.

14. Counsel for the MTRBA asserted that his client has status to intervene as of right in this proceeding, on the basis that, with few modifications, the MTRBA collective agreement with Local 793 has been incorporated by reference into the Project Agreement, and that it is, in reality, those terms and conditions that the Board will be interpreting when deciding this grievance. As the grievance filed by Local 793 "goes to the heart of" the MTRBA collective agreement, it is asserted that the MTRBA ought to have status as of right to intervene in the proceeding. Counsel for the MTRBA suggested that if one clause out of the MTRBA agreement had been plucked out for use by Local 793 and CHIC for its collective agreement, the situation might be different. However, when the MTRBA Agreement is picked up in its entirety, with minor modifications, status follows as of right. Counsel for CHIC agreed that the MTRBA ought to be provided status to intervene in the proceeding, for the reasons set out above.

15. We disagree that the MTRBA has status to participate in this proceeding as of right. It is evident to us that the collective agreement binding Local 793 and CHIC is the Project Agreement, which incorporates by reference the terms and conditions of a number of collective agreements, as modified by the Project Agreement itself. The MTRBA is not a party to that collective agreement. It is true that the wording in the Local 793/CHIC collective agreement is largely identical to the wording of the Local 793/MTRBA collective agreement. This does not, however, lead us to the conclusion that the MTRBA has party status as of right to participate in this proceeding. The MTRBA is not bound by the Local 793/CHIC collective agreement and none of its members would be bound by the determination of the Board in this proceeding. Accordingly, the rights of the MTRBA and its members are not directly affected by the arbitration; nor may the rights under the MTRBA collective agreement with Local 793 be determined in this proceeding. In that light, the assertion that the MTRBA has a right to participate in this proceeding must fail.



16. The question remains as to whether the Board ought to provide the MTRBA status to intervene in this proceeding, in the exercise of its discretion to do so pursuant to Rule 26 of the Board's Rules of Procedure. Counsel for the MTRBA argued in the alternative that to grant intervenor status to his client made sense, in order to avoid a multiplicity of proceedings with respect to the same language binding MTRBA members and Local 793. Counsel submitted that his client and its members could be placed in a difficult position in the future should CHIC lose this grievance arbitration to Local 793, as a subsequent grievance by Local 793 against a member of the MTRBA would be bolstered by the Board's decision in this proceeding. In counsel's submission, it makes labour relations sense in this proceeding to permit all of those governed by the language in question to participate in this arbitration.

17. Counsel for Local 793 asserted a number of grounds for denying intervenor status to the MTRBA. One of the bases for denying status was the suggestion that CHIC had "welched on" the deal reflected by the Project Agreement (and in particular the duration of the Project Agreement) by now asserting that the MTRBA ought to be provided with status to intervene in this proceeding, and that to grant status to the MTRBA would have the effect of "vacating" the underlying deal represented by the Project Agreement. Obviously, the Board was not present during negotiations between CHIC and Local 793, and we are unaware of the substance of the negotiations which took place. However, in the absence of any evidence that the "deal" struck by the parties was based on a representation by CHIC that it would actively attempt to deny the MTRBA any status in such a proceeding, the argument made by counsel for Local 793 is not sustainable. There is just no evidence before the Board to suggest that any deal has been "welched on" by the position CHIC has taken in this proceeding.

18. Counsel for Local 793 noted that the Board has in prior decisions denied intervenor status to entities desiring to participate in a section 133 referral, while at the same time observing that any legally relevant evidence that those entities possessed could be adduced by one of the parties to the proceeding (see, for example, *Williams Contracting Ltd.*, [1980] OLRB Rep. Jan. 121, *The Municipality of Metropolitan Toronto*, [1986] OLRB Rep. April 574 and *E.S. Fox Limited*, [1992] OLRB Rep. April 431). Counsel urged the Board to adopt the same approach here; that is, should any legally relevant evidence be possessed by the MTRBA, counsel for CHIC could call such evidence as part of his case, if he so desired. Counsel also cited *The Municipality of Metropolitan Toronto, supra*, for the principle that the concern by a stranger to a collective agreement that any arbitration proceeding may well become a precedent for it is not a factor the Board will take into account in determining the entitlement to intervenor status.

19. Having considered quite carefully all of the evidence before the Board, and the cases provided by counsel, we are of the view that as a matter of discretion the MTRBA ought to be granted the status to intervene in this proceeding. The critical factor which leads us to this conclusion is that of the desire to avoid multiple proceedings and to ensure, to the greatest extent possible, that Board proceedings remedy the question in issue. During argument, counsel for CHIC directed the Board to Article 6 of the Project Agreement, which provides as follows:

CHIC Constructor and its Members shall let or sublet contracts for any work during construction on the Highway 407 Project covered by the Schedule "A" Collective Agreement Terms, only to contractors and/or subcontractors who are bound to the applicable Schedule "A" Collective Agreements. CHIC Constructor and its Members shall also ensure and require that only contractors and/or subcontractors who are bound by the applicable Schedule "A" Collective Agreements perform all work during construction on the Highway 407 Project covered by the Schedule "A" Collective Agreement Terms, under this Project Agreement, regardless of whether CHIC Constructor or its Members have a contractual relationship with the contractor and/or subcontractor performing the work on the Highway 407 Project.



The thrust of Article 6 of the Project Agreement is to require CHIC and its four members to subcontract all work on the Highway 407 project only to companies "bound to" the Schedule "A" agreement terms, including those contained in the MTRBA collective agreement. Any further subcontracting of work on the Highway 407 project must be to companies "bound by" the Schedule "A" agreement terms, including those contained in the MTRBA collective agreement. As was observed by counsel for CHIC during argument, if the MTRBA is denied status to intervene, the decision in this proceeding will bind only Local 793 and CHIC, but not the MTRBA or any of its members. Work which is subcontracted to contractors bound by the MTRBA/Local 793 collective agreement may well deny the applicability of the Board's ruling to the work being performed. Ultimately, we are left with the situation where the Board's ruling in this proceeding may have little practical effect as it binds only CHIC, and not those entities which will actually be responsible for the performance of the work.

20. The addition of the MTRBA to this proceeding will remedy this situation. The MTRBA and its members will be bound by the decision, and the issue in dispute will be resolved, one way or the other, for the purposes of all work performed on the Highway 407 project. In the circumstances before us, the addition of the MTRBA as a party to this proceeding makes sense from a labour relations perspective. Accordingly, the MTRBA is provided status to intervene in this proceeding pursuant to Rule 26 of the Board's Rules of Procedure.

21. Counsel for Local 793 wrote to opposing counsel on October 10, 1995, respecting certain procedural agreements reached by the parties with the assistance of a senior Labour Relations Officer. This matter is referred to the Registrar, in order to schedule, in accordance with the agreement of the parties, a pre-hearing consultation and dates for the hearing of this proceeding on its merits.

22. This panel is seized.

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**1320-95-R; 1728-95-U; 2317-95-R** Association of Law Officers of the Crown, Applicant v. Crown in Right of Ontario as represented by Management Board of Cabinet, Responding Party v. Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO), Ontario Public Service Employees Union (OPSEU), Intervenor; Lise Favreau, Applicant v. The Crown in Right of Ontario, and Ontario Public Service Employees Union, Responding Parties; Anne Touchette, Applicant v. Ontario Public Service Employees Union, Responding Party v. The Crown in Right of Ontario (as represented by Management Board of Cabinet), Intervenor

Certification - Crown Employees Collective Bargaining Act - Termination - Association of Law Officers of the Crown ("ALOC") applying to represent articling students employed in Ontario Public Service - Board finding that articling students already represented by Ontario Public Service Employees Union (OPSEU) - Certification application dismissed as untimely - Board also dismissing application to terminate OPSEU's bargaining rights in respect of articling students on ground that Act's provisions regarding termination after voluntary recognition not applying to designation of OPSEU as bargaining agent

**BEFORE:** *M. A. Nairn*, Vice-Chair, and Board Members *J. A. Ronson* and *C. McDonald*.

**APPEARANCES:** *Harold Caley* for the applicants; *Donald K. Eady* and *Barbara Linds* for OPSEU; *Cathy Lace* and *Carol Jones* for AMAPCEO; *Brian Loewen* and *Laura Vice* for the Crown in Right of Ontario as represented by Management Board of Cabinet

**DECISION OF THE BOARD;** December 19, 1995

1. Board File No. 1320-95-R is an application for certification brought by the Association of Law Officers of the Crown ("ALOC") on behalf of articling students employed by the Crown in Right of Ontario (the "Crown" or the "employer") during the period of their articles.

2. Board File No. 1728-95-U is an application under section 96 (then section 91) of the *Labour Relations Act, 1995* (the "Act") alleging that the Crown and the Ontario Public Service Employees' Union ("OPSEU") have violated section 66 (then section 61) of the Act.

3. Board File No. 2317-95-R is an application to terminate bargaining rights brought pursuant to section 66 of the Act (then section 61).

4. All of these applications initially raise the issue of whether or not OPSEU holds bargaining rights for a bargaining unit of employees which includes the articling students. In the certification application, OPSEU has intervened claiming it already holds bargaining rights for articling students which constitute a bar to the certification application at this time. In the termination application and the unfair labour practice complaint, the applicants assert that if OPSEU holds bargaining rights, those rights arose through a voluntary recognition agreement which did not have the support of a majority of the employees affected. They ask the Board to declare any bargaining rights with respect to articling students, asserted by OPSEU, to be null and void, thus leaving open the opportunity to pursue the certification application.

5. The panel agreed to hear that issue and remain seized with respect to any subsequent matter arising in the applications. The parties had agreed they would not call any evidence in any formal sense. Bill 7 (the *Labour Relations Act, 1995* and amendments to the *Crown Employees Collective Bargaining Act, 1993*) came into effect before a final decision in these matters issued and therefore applies to these proceedings. The parties were given an opportunity to provide their views and all are agreed that the issues in dispute remain the same despite those legislative changes.

6. The effect of the *Crown Employees Collective Bargaining Act, 1993* (CECBA, 1993) is to apply the rules governing labour relations for private employers in the province, that is, the *Labour Relations Act, 1995*, to the Crown, with certain modifications and exceptions. It also provides some 7000 public employees with the right to participate in collective bargaining for the first time. The articling students are part of that group.

7. Pursuant to then sub-section 23(1) of CECBA, 1993, an Order-in-Council ("O.C.") was signed on February 3, 1994, establishing seven bargaining units consisting of Crown employees. That O.C. ("O.C. 243/94") also describes the bargaining units in an Appendix to it. At issue here are the descriptions of the first and seventh units, set out as follows:

## APPENDIX 1

## I. ADMINISTRATIVE BARGAINING UNIT

The Administrative Bargaining Unit is composed of Crown employees who are public servants employed in positions concerned with:

- administrative activities such as the researching, planning, designing, organizing, or co-ordinating to deliver programs or support government operations; or
- the administrative activities required, for example, to examine, inspect, investigate, audit, analyze, promote, regulate or enforce government programmes, policies, standards, statutes and regulations; or
- the application of scientific knowledge as it relates to resource planning and management;

and includes employees in positions falling under the following classes:

<b>CLASS CODE</b>	<b>CLASS TITLE</b>
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(There are 236 classes listed by numerical code and descriptive title.)

and under such other classes as may be established within the above description.

## VII. SEVENTH BARGAINING UNIT

The Seventh Bargaining Unit is composed of all Crown employees who are public servants and whose positions are not included in the other six bargaining units, but does not include:

- a. persons who exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations; or
- b. lawyers and engineers who are employed in their professional capacity.

In accordance with the above, this bargaining unit includes:

- unclassified employees excluded from the six other bargaining units or whose duties and responsibilities are equivalent to the duties and responsibilities of positions falling under the classes mentioned hereunder; and
- employees in positions falling under the following classes:

(There are 185 classes listed.)

and other similar classes as may be established.

8. Although apparently out of sequence, on January 19, 1994, another Order in Council had been approved designating OPSEU as the bargaining agent for each of the bargaining units one through six.

9. In January 1995, the Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) applied to be certified in respect of the seventh unit. OPSEU intervened in that application claiming that some almost 2000 employees fell within the descriptions of one of the six bargaining units for which OPSEU held bargaining rights by virtue of the designations. By letter dated March 17, 1995 to counsel for AMAPCEO, counsel for OPSEU forwarded a list of names of employees for whom OPSEU claimed bargaining rights. The names of approximately 96 articling students appear on that list, as well as their position and class.



10. The Crown and AMAPCEO entered into a voluntary recognition agreement dated March 25, 1995 in respect of the seventh unit. That agreement was subject to ratification and was still subject to the challenges to the list raised by OPSEU. On April 21, 1995 AMAPCEO, the Crown, and OPSEU entered into an agreement (the "tripartite agreement"). In addition to dealing with the other challenges, the parties therein agreed that articling students were in bargaining unit #1.

11. On April 28, 1995 OPSEU and the Crown entered into an agreement "as a full and final settlement of the transfer of employees discussed" in the tripartite agreement. That agreement sets out how conditions of employment including classification levels, wage rates, seniority, etc. will be determined. For purposes of this dispute, ALOC notes that the parties consistently used the term "transfer" to describe what was occurring in respect of the affected employees, including the articling students.

12. A recommendation was made to the Civil Service Commission in May, 1995 to "establish new OPSEU classes to accommodate the transfer of former positions in the Seventh Unit in accordance with the provisions of the tripartite Memorandum of Agreement between OPSEU, AMAPCEO and the Employer". Appendix A of that recommendation is titled "NEW CLASSES IN OPSEU (May 8, 1995)" and refers to the class title of "General Administration (Articling Student)" as within bargaining unit #1.

13. An Order-in-Council dated May 24, 1995 ("O.C. 1500/95") was approved establishing the classifications and corresponding salary ranges as therein listed.

14. As a result of these agreements and approvals, the disputes between OPSEU, AMAPCEO, and the Crown concerning the challenges to the list and various outstanding grievances brought by OPSEU were resolved.

15. It is the position of OPSEU and the Crown that articling students were placed in bargaining unit #1 by virtue of the Order in Council and that therefore OPSEU holds bargaining rights for them by virtue of the designation as bargaining agent. Further they assert, sub-section 24(4) of CECBA, 1993 as amended applies as a complete answer to these proceedings. ALOC takes the position that articling students were placed in the seventh bargaining unit by virtue of the Order in Council and that therefore OPSEU (at least) does not hold bargaining rights for them. AMAPCEO takes no position with respect to this issue.

16. We have reviewed the parties' submissions and all of the documentary material filed. While that material lacks clarity we are persuaded that OPSEU holds bargaining rights for articling students.

17. We start from the direction in CECBA, 1993 that the seventh bargaining unit is described, by statute, as including those public servants who are *not* included in the other six units. It is, in essence, a "tag end" unit. The reference in the O.C. to class codes in the seventh bargaining unit must therefore be interpreted consistently with that statutory language.

18. It is also then necessary to first consider the description of, in this case, the first bargaining unit to determine whether the position of articling student falls within that description. There was no real dispute that the duties and responsibilities of an articling student can be described as falling within the first two descriptive paragraphs of bargaining unit #1.

19. Even assuming that the list of class codes forms part of the bargaining unit description, it is not an exhaustive list, given the words "and *includes* employees in positions falling under the

following classes". This interpretation is also consistent with the inclusion of the words at the end of the listing of classes which contemplates the addition of "such other classes as may be established within the above description". Although the articling students' position is not new, a new classification for articling students was established by the Order-in-Council of May 1995 which appears to confirm they were properly included in the first bargaining unit for which OPSEU holds bargaining rights.

20. We are moved to this interpretation, in part, because the class codes listed do not specify the various positions falling within each class. Even if we were to accept that the class codes formed part of the bargaining unit description, we would still be required to look elsewhere to determine what positions fell within any particular class code. It is at that point that the ambiguity arises in this case. The applicants assert that they were told they fell within AGA14, a class code listed within the seventh bargaining unit, and certainly some of the material filed supports that position.

21. That material was generated by the Crown. However, other material filed supports OPSEU's position and reflects the position that the Crown also asserts. The Crown was also party to that material, which includes agreements between the Crown, OPSEU and AMAPCEO, agreements between the Crown and OPSEU, and a further Order-in Council.

22. It would appear that, at best, the Crown has taken inconsistent positions with respect to the position of articling student. Before us, the Crown asserted that it had made a mistake to treat articling students as falling within the AGA14 class code as that class was referable to and included only classified staff. Articling students are part of the unclassified service under the *Public Service Act* due to the temporary nature of their employment. Assigning the AGA14 class to articling students was, according to the Crown, a "dummy class code", essentially for payroll purposes. Further, the duties and responsibilities of positions falling within the AGA14 class code do not reflect the duties and responsibilities of articling students.

23. The Crown has agreed with OPSEU and AMAPCEO that articling students fall within bargaining unit #1 and has acted in furtherance of that agreement by having passed an O.C. creating a position class for classified staff that reflects the duties and responsibilities of articling students, which can act as a comparator for articling students in the unclassified service.

24. Considered in the context of the amendments in CECBA, 1993 wherein some 7000 public employees were being granted the right to participate in collective bargaining for the first time, and the historical relationship between the Crown and OPSEU on behalf of the vast majority of the public service in the province, it is reasonable to conclude that the legislation and the O.C. were designed to provide those institutional parties with some flexibility to address problems that would invariably arise in the transitional stage to broader collective bargaining participation. The fact that OPSEU's bargaining rights are protected from challenge by the statute for an interim period is consistent with that view.

25. Similarly, to conclude that positions identified within each class code were definitively described as of the date of the O.C. would suggest that the employer would be unable to modify work duties in response to changing circumstances affecting those positions and their proper placement by class code.

26. We acknowledge that those employees falling within OPSEU represented bargaining units have had no say with respect to their choice of bargaining agent, because they find themselves in a bargaining unit where the bargaining agent has been designated by legislation. However, that is no different from the historical reality under "old" CECBA, and is a product of the



recognition that the public service is subject to some modifications from private sector labour relations. However, under CECBA, 1993 these employees will have the opportunity to challenge OPSEU's representation after the protected period set out in the legislation passes.

27. The applicants raised an issue at the hearing as to whether articling students were Crown employees given the definition of that term within the *Public Service Act* and the provision of section 8.1(3) of that Act. Counsel argued that his clients had not been "expressly appointed as such by the Lieutenant Governor in Council, the Commission or a minister." We are satisfied that articling students are "employed in the service of the Crown" and fall within the definition of public servant under that Act. We note that the contract signed by the applicant in Board File No. 2317-95-R requires the applicant to affirm an oath to faithfully discharge her duties as a public servant. We note too that the certification application identifies the Crown as the employer of the articling students. If one is appointed to the public service or the civil service one is, *ipso facto*, a Crown employee, being employed in the service of the Crown.

28. We conclude therefore that OPSEU holds bargaining rights for articling students pursuant to O.C. 243/94 and that therefore the application for certification in Board File No. 1320-95-R is untimely and is therefore dismissed. Further, given the provisions of subsection 24(4) of the CECBA, 1993 as amended, section 66 of the *Labour Relations Act, 1995* does not apply to the designation of OPSEU as the bargaining agent and therefore the applications in Board File Nos. 1728-95-U and 2317-95-R are hereby dismissed.

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**1978-95-U Ontario Public Service Employees Union, Applicant v. The Crown in Right of Ontario as represented by the Ministry of Transportation, Responding Party**

**Arbitration - Crown Employees Collective Bargaining Act - Practice and Procedure - Unfair Labour Practice - Board declining to defer unfair labour practice complaint dealing with abolition of certain positions to Grievance Settlement Board**

**BEFORE:** Dale L. Hewat, Vice-Chair, and Board Members W. H. Wightman and B. L. Armstrong.

**APPEARANCES:** L. Steinberg and T. Merante for the applicant; S. Patterson, W. Peck and J. Henderson for the responding party.

**DECISION OF THE BOARD; December 15, 1995**

1. This is an application under section 91 of the *Labour Relations Act* R.S.O. 1990 c.L2, as amended (the "Act"), in which the applicant (the "Union") alleges that the responding party (the "Ministry") has violated sections 15, 65, 67 of the Act and section 43(1) of the *Crown Employees Collective Bargaining Act* ("CECBA"). On November 10, 1995 the *Labour Relations and Employment Statutes Law Amendment Act, 1995* was given Royal Assent, thereby bringing into effect the *Labour Relations Act, 1995*. The differences between the *Labour Relations Act* and the *Labour Relations Act, 1995* have no bearing on this case. The section numbers referred to in this decision are as they were under the *Labour Relations Act*.



2. This matter arises out of the negotiation and implementation of a new class standard for Ministry Highway Transportation Inspectors pursuant to the terms of the collective agreement in effect between the parties. For the purpose of this decision, the background to the current application is as follows. On March 22, 1991 grievances for improper classification were filed by the Union on behalf of the complainants in the instant application who held positions of Highway Construction Inspector II. By a consent order of the Grievance Settlement Board (the "GSB"), dated March 19, 1993, the parties agreed to create a new class standard for the Highway Construction Inspector II positions. A new class standard entitled Quality Assurance Inspector was ultimately negotiated between the parties. However, the parties were not able to agree on the appropriate salary rate for the class standard and therefore, the salary issue was remitted to arbitrator R. J. Roberts, per article 5.8.1 of the collective agreement. A decision was issued by arbitrator Roberts on January 13, 1995 in which he awarded a 10% salary increase for Quality Assurance Inspectors. Following the award, the parties entered into a memorandum of settlement in order to implement the 10% salary increase within 90 days of execution of the memorandum of settlement. Prior to the final implementation of the memorandum of settlement, the Ministry announced, on June 28, 1995, that a decision had been made to abolish the position of Quality Assurance Inspectors in the geographic unit known as the Central Region. As a result of this announcement, the complainants were transferred to the position of Senior Technician Transportation Construction pursuant to article 5 of the collective agreement. On July 20, 1995 each of the complainants filed grievances alleging that the Ministry "acted in bad faith, and in an unreasonable manner, by abolishing the position of Quality Assurance Inspector when in fact the work continues to exist and continues to be done".

3. The current application states that the responding party has violated sections 15, 65, and 67 of the Act and section 43(1) of CECBA when it abolished the positions of Quality Assurance Inspectors. In addition to other remedies sought, the applicant is seeking a declaration that the Ministry has violated CECBA/ the Act by abolishing the position of Quality Assurance Inspectors, thereby imposing reprisals as a direct result of the group seeking reclassification. The applicant is also seeking a declaration that the Ministry bargained in bad faith during the reclassification negotiations.

4. The Ministry brought a preliminary motion in which it requested the Board to exercise its discretion to defer this matter to the GSB. The Ministry maintains the position that the grievances filed on July 20, 1995 involve the same subject matter and request for remedial relief as the complaint before the Board, and argued that the GSB is the more appropriate forum to deal with the complaints. The parties agreed to have the Board deal with the preliminary matter of deferral before dealing with the case on the merits. Having considered the submissions of the parties, the Board is of the view that in this case it is not appropriate to exercise our discretion to defer to the GSB. What follows are our reasons for the decision not to defer.

5. Counsel for the Ministry submitted that the instant complaint is essentially about a classification grievance and the implementation of that grievance, which he stated is an issue for which the GSB, not the Board, holds expertise to determine. As well, counsel noted that under section 19(1) of CECBA the GSB has the authority to exercise jurisdiction on classification questions. He stated that any allegations pertaining to reprisals and requests for remedial relief can be dealt with by the GSB pursuant to article A.1.2 of the collective agreement which provides that "There shall be no discrimination or harassment practised by reason of an employee's membership or activity in the Union." Counsel also submitted that the complaint does not raise any important or broad application of the Act which would require the Board to seize jurisdiction. In addition he stated that the exercising of any rights with respect to a classification grievance is now a moot point since classification grievances can no longer be raised. Counsel acknowledged that the Ministry had

intended to raise an objection to the GSB's jurisdiction with respect to the July 20, 1995 grievances. However, Counsel agreed that the Ministry would request the GSB to reserve on the jurisdictional issue and render its decision once it determines whether the union is able to prove that the Ministry's actions were motivated by anti-union animus. Counsel referred to the Board's jurisprudence in *Valdi Inc.*, [1980] OLRB Rep. Aug. 1254, *The General Hospital of Port Arthur*, [1986] OLRB Rep. Sept. 1218, *Lloyd-Truax Limited Wingham*, [1986] OLRB Rep. July 994 and *Fortinos Supermarket Limited*, [1993] OLRB Rep. Oct. 974. Counsel also relied on the Divisional Court's decisions in *OPSEU and Carol Berry et al and The Crown in Right of Ontario (Ministry of Community and Social Services)*, Ontario Divisional Court, unreported, February 17, 1986 and *OPSEU (Anderson) and The Crown in Right of Ontario*, Ontario Divisional Court, unreported, September 21, 1990, to establish that the GSB has extensive remedial powers to determine classification matters.

6. Counsel for the union submitted that the matter before the Board is not one simply involving a "private" matter of a classification grievance. Rather, counsel characterized the complaint as one pertaining to the process that followed the the initial classification grievance which involved the negotiation of the new class standard, the steps taken with respect to implementation of the class standard and arbitrated salary award, and the ultimate elimination of the position of Quality Assurance Inspectors. The union alleges that the Ministry knew that the position of Quality Assurance Inspectors would be eliminated yet proceeded to negotiate and discuss the class standard, appeared before arbitrator Roberts and took steps to implement Roberts salary arbitration by signing the memorandum of settlement. Counsel stated that the complaint is about allegations that the Ministry abolished the Quality Assurance Inspector positions in retaliation for the complainants exercising their rights to grieve improper classification and about the Ministry's failure to negotiate in good faith which represents a repudiation of the collective bargaining process. Furthermore, counsel asserted that, given the Ministry's objection to the GSB's jurisdiction, the complainants may not have access to a remedy in the event that the Ministry's objection is successful. In any event, counsel argued that the remedy available under the collective agreement may be less extensive than the remedies under the Act. Counsel referred to the Board's decision in *Cuddy Foods Ltd.*, [1988] OLRB Rep. Aug. 768.

7. The Board's jurisprudence with respect to deferral is succinctly set out in *Valdi Inc.*, *supra*. At page 1258 of that decision, the Board states as follows:

7. It may be that the Board's approach has been somewhat less refined but the American treatment of deferral issues is not inconsistent with Board jurisprudence. Cases like *Canadian Acme Screw and Gear Limited*, (1954), 54 CLLC ¶17,083; *John Inglis Co. Ltd.* (1953), 53 CLLC ¶17,049; *National Showcase Co. Ltd.* (1961), 61 CLLC ¶16,185; *Heist Industrial Services Ltd.* (1963), 63 CLLC ¶16,263; *Wallace Barnes Co. Ltd.* (1961), 61 CLLC ¶16,198 and *Collingwood Shipyards*, [1967] OLRB Rep. July 376 all approach the deferral doctrine as one that will encourage the practice and procedure of collective bargaining. These cases are also aimed at discouraging dual litigation and forum shopping by encouraging the parties to employ initially the contractual procedures for dispute settlement which they have created. See *Kodak Canada Ltd.*, [1977] OLRB Rep. Feb. 49. But it is also apparent that in those cases the Board acted on the premise that the resolution of the contractual issues was congruent with the resolution of the statutory unfair labour practice issues. See *Imperial Tobacco Products (Ont.) Ltd. et al*, [1974] OLRB Rep. July 418 at para. 26. This congruence between the contractual dispute and the overlying unfair labour practice complaint is significant in the sense that the Board is able to take the view that the matter is primarily a contractual or factual difference between the parties. See *Corporation of the County of Middlesex*, [1976] OLRB Rep. Aug. 427 at para. 4. However, where key provisions of *The Labour Relations Act* require important elaboration and application or where the employer's or trade union's conduct represents a total repudiation of the collective bargaining process, it becomes more difficult to characterize the complaint as essentially contractual. It is in these situations that the Board has asserted its jurisdiction. The former situation is reflected in *Thomas Built Buses Ltd.*, [1980] OLRB Rep. Feb. 264 and the latter can be



seen in *New Gregory House*, [1977] OLRB Rep. Sept. 584. Other circumstances in which the Board has been unwilling to defer to grievance arbitration involve cases where arbitration may have been unavailable to the complainant or where relief in that forum could have been inadequate.

The Board, in *Valdi* also remarked, at page 1259, that disputes over the extent and exercise of contractual rights are not unusual and will not normally become a policy concern transcending the collective bargaining relationship. The Board also commented that a disciplinary dispute over union activity within the context of a long-term bargaining relationship, where there exists a “no discrimination” provision on the basis of union membership, may be amenable to resolution by the parties through their own dispute resolution procedures. In *The General Hospital of Port Arthur*, *supra*, at page 1221 the Board summarized the considerations with respect to deferral in the following way:

The Board's practice with respect to the issue of deferral to arbitration has, at its starting point, a policy that the practice and procedure of collective bargaining are to be encouraged and that dual litigation or forum shopping are to be discouraged. However, if the Board is to defer to arbitration, it must be satisfied that the resolution of the contractual issue is “congruent with” the resolution of the complaint that here has been a breach of the Act. That congruence is essential if the Board is to defer to arbitration. Where, the matters in dispute involve a significant elaboration or application of significant provisions of the Act and where the impugned conduct at least arguably constitutes a violation of fundamental rights under the Act, and where the complaint transcends the interests of the immediate parties, the complaint cannot be characterized as being essentially contractual...Consequently, even where the complaint does involve conduct which is either a violation or not a violation of a collective agreement, there may still exist an unfair labour practice that is appropriate for this Board to deal with.

8. The complaint before us involves a grievance under the collective agreement with respect to abolishing the position of Quality Assurance Inspectors, and also involves a dispute about the actions and motives of the Ministry in negotiating and implementing the new class standard for Quality Assurance Inspectors. Without commenting on the merits of the union's allegations, the complaint raises serious questions with respect to the application of sections 15, 65 and 67 of the Act. Although the collective agreement contains a “no discrimination” clause, the language is not as exhaustive as the language in sections 65 and 67 of the Act, nor does it fully address the allegation of bad faith bargaining. Thus, in our view, the issues raised by the union cannot be characterized as essentially contractual in nature or that the resolution of the grievance will be congruent with the resolution of the unfair labour practices alleged (see: *The General Hospital of Port Arthur*, at page 1221).

9. It is also apparent that the remedies available to the complainants may be inadequate should these matters be deferred. Although it is recognized that the GSB retains broad remedial jurisdiction with respect to effecting a proper classification, as stated by the Divisional Court in *Anderson and Berry*, *supra*, it is questionable whether the remedial powers of the GSB include addressing the issues raised in the instant complaint. In the *Anderson* case, the Court confirmed the GSB's statutory duty under CECBA to effect a final and binding settlement of all differences between the parties with respect to effecting a proper classification. In this regard, the the Court stated that the GSB's “power to implement a proper classification must necessarily include the power to review the contents of that classification for sufficiency and to instruct management to alter or amend the class standard to reflect properly the duties and responsibilities, etc. of the grievors” (at p.16). In this case, the GSB has already made a final determination on the proper classification and salary rate for the class standard of Quality Assurance Inspectors. The fact that the right to file a classification grievance is now moot, does not address the issues in the union's application. The allegations raised in the application do not challenge the appropriateness of the classification, but rather challenge the motives and action taken by the Ministry in negotiation of the class standard and in the implementation of the GSB's final and binding interpretation of the



classification. Characterized in this way, the allegations, in our view, more appropriately fall within the statutory provisions in the Act under which the Board has a duty to enforce and retains extensive remedial powers. Having made this determination, we do not find it necessary to make a determination with respect to section 43(1) of CECBA. Likewise, it is not necessary to determine whether the preliminary objection regarding the GSB's jurisdiction which would be raised by the Ministry at the arbitration of the grievances, could deny the complainants access to remedial relief under the collective agreement.

10. Accordingly, in the circumstances of this case, and in light of the alleged violations of significant statutory rights, we have concluded that this is not an appropriate case for the Board to defer this matter to the GSB. The Board will therefore hear this matter on the merits. The matter is referred to the Registrar for rescheduling. This panel is not seized.

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**1106-95-R International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 634, Applicant v. 1085803 Ontario Limited c.o.b. as Grand Theatre Centre of Sudbury, Responding Party**

**Certification - Employee - Union seeking to represent theatre's stage employees - Board rejecting employer's assertion that stage hands actually independent contractors and not "employees" within meaning of the Act - Certificate issuing**

**BEFORE:** *M. Kaye Joachim*, Vice-Chair, and Board Members *R. M. Sloan* and *D. A. Patterson*.

**DECISION OF THE BOARD;** December 21, 1995

1. This is an application for certification in which the parties have reached agreement on all matters in dispute between them with the exception of the matter described below.
2. The parties have agreed upon the following bargaining unit description:

All stage employees of 1085803 Ontario Limited c.o.b. as Grand Theatre Centre of Sudbury, in the Regional Municipality of Sudbury, save and except Theatre Manager and persons above the rank of Theatre Manager.
3. The only dispute between the parties is whether the stage employees are employees or whether they are independent contractors within the meaning of the Act. The applicant union takes the position that the disputed individuals are employees. The responding employer takes the position that they are independent contractors. By a decision of the Board dated July 28, 1995, a Labour Relations Officer was appointed to inquire into and report to the Board concerning the matter in dispute.
4. The Labour Relations Officer issued his report on October 17, 1995 and it was circulated to the parties. The parties were requested to make written submissions to the Board by October 26, 1995. The Board received the applicant's submissions; the responding party did not make any written submissions.
5. On the date of the application, June 13, 1995, there were four persons working as stage

hands on a production at the Grand Theatre Centre of Sudbury. The officer's report consists of the evidence of Kevin McArthur, Rob Nardin, Bernie Lalonde. The parties agreed that the examinations of these persons are representative of all persons in dispute.

6. The Board has carefully considered the transcript of the examinations, the exhibits filed, and the submissions of the applicant, and has concluded that the persons in question are employees, rather than independent contractors.

7. The individuals in question work as stage hands for the responding party when the responding party has a production to present at the Grand Theatre Centre of Sudbury.

8. Rob Nardin was originally a full-time technical director for the responding party. In April 1994 he was issued a record of employment terminating his employment, but he continued to do the same work for the responding party. Since April 1994, he has been paid on a per production basis at a rate of \$150.00 per day. He estimates that there are approximately 100 productions annually. His job is to implement the technical theatrical needs of the artist for the production. In this capacity, he acts as a liaison between the artist production crew and the principal of the responding party, Claude Michel. Under the direction of Mr. Michel, he selects the staff, such as Kevin McArthur and Bernie Lalonde, needed to set up the production. Mr. Michel has the ultimate power with respect to hiring or firing or limiting the work opportunities of the stage hands.

9. Bernie Lalonde and Kevin McArthur each have other jobs and work for the responding party on an occasional basis. Kevin McArthur testified that he has been called in approximately 10 times per year for the last three years. He has also worked as a stage hand for other organizations although the majority of his stagehand work is done for the responding party. Bernie Lalonde testified that he has been hired for all the shows that required additional stage hands for the last five years. He estimated the number of shows he worked on as 30 to 50 shows per year.

10. The individuals bring some tools of the trade with them. For example, Kevin McArthur usually brings a crescent wrench. Bernie Lalonde usually brings a set of tools, a rope and a harness which he needs to perform his work. Rob Nardin brings his own set of tools. All these individuals also work with tools provided by the responding party. Kevin McArthur and Bernie Lalonde are paid an industry-wide salary of \$9.00 an hour and are called in for a minimum of four hours for each production. They are supervised by Rob Nardin who in turn reports to the principal of the responding party, Claude Michel.

11. None of these individuals have their own company or registered business for the purpose of carrying out the stage hand work. None of them hire employees of their own. They do not have a contract in writing or otherwise with the responding party. None of the employees currently invoice or bill the responding party. The employees are paid either in cash or by cheque by the Grand Theatre. Currently, no statutory deductions or withholdings are made. All of the employees regard themselves as employees of the Grand Theatre.

12. In *Algonquin Tavern*, [1981] OLRB Rep. Aug. 1057, the Board applied a list of eleven factors which, alone or in combination, assist in determining whether a person is an independent contractor:

1. *The use of, or right to use substitutes.* It has been considered inconsistent with an employment relationship if one could fulfil the bargain with someone else's labour rather than one's own work and skill. This is significant however, only to the extent that it is the alleged employee who makes that decision.
2. *Ownership of instrumentalities, tools, equipment, appliances, or the supply of*

*materials.* These factors indicate something in the nature of a capital investment so that gains or losses will depend upon something other than the individual's own labour. On the other hand, reliance upon another's financial loss on capital infrastructure for the essential tools necessary for performance of the work is more likely to be associated with an employment relationship.

3. *Evidence of entrepreneurial activity.* This factor is closely associated with ownership of tools and encompasses self-promotion, advertising, use of business cards, soliciting to develop "clients", the use of agents, and organizing one's "business" (by incorporation or otherwise) to take advantage of limited liability or the tax laws. It may be significant whether the individual has a "chance of profit" or "risk of loss"; that is whether business acumen, sensitivity to the needs of the market, astute investment, innovation, or risk taking, yield a reward or financial loss.
4. *The selling of one's services to the market generally.* If the purchasers of individual's services are numerous and of diverse character, the individual looks more like an independent self-employed person than an employee. If, on the other hand, an individual has a long standing and consistent relationship with one or a limited number of purchasers, he is more likely to be considered a "dependent" contractor or employee — especially if the circumstances or contractual relationship limit his ability to dispose of his skill to other purchasers, or his "prime customer" is given priority.
5. *Economic mobility or independence, including the freedom to reject job opportunities, or work when and where one wishes.* Of course, few independent contractors are entirely free in this regard, but the question is one of the degree. A "self-employed" person has more scope for choice than an employee or dependent contractor who must look for the bulk of his work opportunities to one or restricted number of sources with whom he has "tied his fortunes".
6. *Evidence of some variation in the fees charged for the services rendered.* This factor is less helpful when those services are standardized and the market is relatively competitive. In such circumstances, one would expect a uniform fee structure even if the individuals providing the services were doing so as "independent contractors", and individual employees may also bargain about their wage levels; however, the ability to bargain or fix the contract fee in accordance with the work or the purchaser's ability to pay, may indicate independent contractor or self-employed status.
7. *Whether the individual can be said to be carrying on an "independent business" on his own behalf rather than on behalf of an employer or, to put it another way, whether the individual has become an essential element which has been integrated into the operating organization of the employing unit.* Integration in this sense usually presupposes a stable rather than a casual relationship and also involves the nature, importance and "place" of the services provided in the general operation of the employing unit. The more frequent the re-engagement or longer the duration of the relationship, the more likely the individual will be regarded as part of, or integrated into, the employer's organization. In the case of entertainers, the cases suggest that it may also be useful to determine the extent to which the artist's material or co-workers are influenced by the employer; that is, whether the artist is left to entertain in his own right, or whether his talents are moulded to conform with the employer's artistic vision or interests. Even an individual engaged for a short time may be considered "integrated" into the employer's operation in the manner of an employee, if he is required to devote the *whole* of his working time during the period to the service of the employer, promote its organization, or fill in his "non performing" time with unrelated ancillary duties. (See: *Whittaker, supra.*)
8. *The degree of specialization, skill, expertise or creativity involved.* If these are dominant element in the relationship, the control test becomes less useful as an indicator of employee status, and in the absence of "integration" into the respondent's organization, the disputed individual is "self-employed" professional.
9. *Control of the manner and means of performing the work — especially if there is active*



*interference with the activity.* However, it is the *right* to interfere rather than the *ability* to do so which is significant. The fact that a particular occupation involves technical skill, putting control of the details beyond the capacity of the employer, does not preclude a skilled employee from being so regarded, since the right to control may exist even though the ability to do so does not. Similarly, the power to discipline, withhold rewards, or terminate the relationship *at will* and *without cause* may indicate an employment relationship whether or not the employer exercises this power.

10. *The magnitude of the contract amount, terms, and manner of payment.* If the financial terms of the relationship approximate wages (for example, if deductions are made for income tax or other benefits are provided or if an individual is paid by the hour rather than the result) an employment relationship may be indicated. The magnitude of the contract amount can sometimes be significant, (although sports celebrities and professionals may be very highly paid yet still be “employees”; and independent professionals may charge an hourly rate rather than a block fee).
13. Applying those features to the facts of this case, the Board finds that these persons are not independent contractors.
14. While these individuals supply some of their own tools, they also work with the tools provided by the Responding party. None of the workers exhibited the traditional indicia of entrepreneurial activity. They did not incorporate businesses to carry out the stage hand work; they did not have business cards or advertise their services. Kevin McArthur and Bernie Lalonde both testified that they had performed similar work for other organizations. Rob Nardi’s evidence was that while he did occasional work for other organizations, the majority of his time was spent working for the responding party.
15. Kevin McArthur testified that although he could hypothetically refuse to accept work offered if he was already working for another organization, that this had never occurred. Bernie Lalonde testified that when this had occurred in the past, he chose work at the responding party. Rob Nardi testified that he had an arrangement with the principal of the responding party, Claude Michel, that he would work on all the productions put on by the responding party.
16. Kevin McArthur and Bernie Lalonde are paid according to the “industry standard” for a minimum call-in period. There is no negotiation involved. Rob Nardi is paid a set rate of \$150 per day/per show.
17. It cannot be said that any of the individuals are carrying on an “independent business” on his own behalf. Rather, they supply their labour on an as needed basis to assist in the responding party’s enterprise of staging productions.
18. Kevin McArthur and Bernie Lalonde work under the direction and control of Rob Nardi, who reports directly to Claude Michel. While each of them exercises some degree of independence as skilled employees, they are subject to the ultimate control of Claude Michel.
19. Although no deductions are currently made from the amounts they are paid approximate wages. None of the employees currently invoice or bill the responding party.
20. In light of all of the above, the Board concludes that the individuals in question are not independent contractors, but rather, employees. While the relationship between Kevin McArthur and Bernie Lalonde and the responding party is of an occasional nature, in the Board’s view, this does not detract from our finding that they are employees.
21. The casual or occasional nature of the relationship between the employer and the individual does not preclude a finding that the person is an “employee”. See Sack and Mitchell,

*Ontario Labour Relations Board Law and Practice* (1985, Butterworth & Co. (Canada) Ltd. Toronto) at paragraph 3:3335 and the cases cited therein.

22. Accordingly, the Board concludes that the stage employees are employees of the responding party.

23. In the previous decision of the Board dated July 28, 1995, the Board found that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act* and set out the appropriate bargaining unit, described in paragraph 2 above.

24. In accordance with the Rules of Procedure respecting applications for certification, the responding party has filed a list of employees in the bargaining unit together with some sample signatures for the employees on that list.

25. In support of its application for certification the applicant union filed documentary evidence of membership in the form of cards. The cards were signed by each employee concerned and indicate a day within the six month period immediately preceding the application date. The membership evidence is supported by a duly completed declaration verifying membership evidence.

26. The Board is satisfied on the basis of all the evidence before it, that more than fifty-five per cent of the employees of the responding party in the bargaining unit on June 13, 1995, the certification application date, had applied to become members of the applicant on or before that date.

27. A certificate will issue to the applicant.

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## **2865-92-U William Hill Jr., Applicant v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938, Responding Party**

**Duty of Fair Representation - Parties - Reconsideration - Remedies - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor's discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

### **DECISION OF THE BOARD;** December 1, 1995

1. By letter from counsel dated and delivered to the Board on October 31, 1995, Cott Beverages ("Cott") seeks reconsideration of the Board's October 11, 1995 decision herein. In that decision, I dealt with the question of remedy which arose out of the January 25, 1995 decision in this application in which I held that Local 938's decision not to take the applicant's October 28, 1992 grievance to arbitration was arbitrary and in bad faith, contrary to what was then section 69 (and is now section 74) of the *Labour Relations Act*. (I note that in paragraph 45 of the January 25, 1995 decision I incorrectly referred to the grievance as being dated October 19, 1992. That paragraph is hereby amended accordingly.) In the October 11, 1995 remedy decision, I ordered Local

938 to take the applicant's discharge grievance relating to events on October 23 to 26, 1992 to arbitration. I further ordered that Cott waive any time limits or objection to timeliness in that respect.

2. In its request for reconsideration, Cott makes the following submissions and requests:

We have been retained by Cott Beverages in respect of the above matter. Cott Beverages is the employer with whom Mr. Hill was employed until his termination in 1992. Cott Beverages recently received a Board decision dated October 11, 1995 in respect of Mr. Hill's complaint that the Teamsters Local 938 ("the union") failed in its duty to represent him in a manner that was not arbitrary, discriminatory or in bad faith, contrary to section 69 of the *Labour Relations Act*. The Board decision directs the union to take Mr. Hill's dismissal grievance to arbitration. The decision also purports to order Cott Beverages to "waive any time limits or objections to timeliness in that respect".

The notice sent to Cott Beverages to advise of this hearing was dated June 27, 1995 and is addressed to "Cott Beverages 6525 Viscount Rd., Mississauga, ON, L4V 1H6". The notice does not mention that the hearing might result in a remedy being awarded against Cott, which is not a party to these proceedings.

It is Cott's position that the Board does not have jurisdiction to issue an order directing Cott Beverages to waive any of its rights. Cott Beverages was not provided with effective notice of the hearing. The notice that was provided in no way indicated that there was the potential for remedy to be awarded against Cott notwithstanding that Cott was not a party to the proceeding and was not the subject of Mr. Hill's section 91 complaint. In any event section 91 of the *Labour Relations Act* does not contemplate awarding a remedy that includes ordering non-parties to the Labour Board proceeding to forego the legal rights which they are entitled to exercise in another proceeding before a different tribunal.

It is not clear from the Board's decision whether its order against Cott Beverages is intended to apply to the time limits in the collective agreement or whether it is intended to also preclude Cott from relying on the prejudicially delay inherent in attempting to defend against a grievance of a termination that occurred three years ago. Without prejudice to Cott's position that the Board has no jurisdiction to preclude Cott from relying on either of these, it is Cott's position that the Board's decision applies only to the time limits contained in the collective agreement and that the decision does not apply to preclude Cott from arguing that the grievance should be dismissed because the delay in bringing it has prejudiced Cott's position.

Again without prejudice to Cott's position on the Board's jurisdiction, it is our position that since it is the union which is in breach of the *Labour Relations Act*, not Cott Beverages, it is inappropriate on the merits of this situation to grant a remedy against Cott. The Board's remedy should have been restricted to the party in breach of the Act, namely the union.

In any event, it is also Cott's position that the union should be responsible for the full costs of the delay involved in bringing the grievance, including any compensation which may be awarded to Mr. Hill by the arbitrator of the grievance, as it is the union's breach of the Act that has resulted in the delay. The Board should make this determination **before** the arbitration, not after, as the Board's decision may facilitate settlement negotiations between Mr. Hill, the union and Cott.

In summary, Cott Beverages requests the following:

1. that the Board schedule a hearing to reconsider the decision of October 11, 1995 in order to deal with the question of the Board's jurisdiction to grant a remedy against Cott Beverages;
2. that, the hearing also reconsider the merits of the decision to issue a remedy against Cott Beverages, assuming the Board finds that it has the jurisdiction to do so;
3. that, assuming the Board's decision remains unchanged from its October 11, 1995 ruling, the Board clarify whether its order against Cott Beverages applies only with respect to the time lim-



its contained in the collective agreement or to the prejudicial effect of the delay in bringing the matter to arbitration; and

4. that, assuming the Board's decision remains unchanged from its October 11, 1995 ruling, the Board rule on the issue of the union's liability for damages which Mr. Hill may be awarded in the arbitration and that this issue be determined before the arbitration occurs.

3. Section 114(1) (formerly section 108(1)) of the *Labour Relations Act, 1995* provides that:

114.-(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

Pursuant to this provision, the Board has a broad discretion to reconsider any of its decisions. However, the same provision, and legal and labour relations considerations, also demand that the Board operate from the premise that a Board decision be final and conclusive for all purposes unless there is a good reason to change it. Accordingly, the Board has in the past generally declined to reconsider a decision unless an obvious error has been made; or a request for reconsideration raises important policy issues which have not been given adequate attention or consideration; or the party requesting reconsideration proposes to adduce new evidence which it could not, with the exercise of reasonable diligence, have obtained and adduced previously, and which new evidence would, if accepted, have a material impact on the decision in question; or if a party seeks to make representations which it has had no previous opportunity to make. Section 114(1) of the Act is not intended to provide an opportunity for someone to make representations s/he had the opportunity but chose not to make, or an opportunity for someone to re-argue his/her case, either *de novo* or as some form of appeal. There is nothing in the recently proclaimed *Labour Relations Act, 1995*, (Bill 7) which requires or suggests that the Board should take a different approach to request for reconsideration now, assuming that the provisions of *Labour Relations Act, 1995* apply in this case.

4. I note that the Board's Rules of Procedure at the time this request was made provided (in Rule 83) that a request for reconsideration include complete written representations in support of that request. Since there is no apparent conflict between this Rule and the *Labour Relations Act, 1995* or the Board's interim Rules, it continues to apply.

5. Having regard to Cott's representations in its request for reconsideration in this case, I am not persuaded that it is necessary or appropriate to hold a hearing with respect to Cott's request. Further, I am not satisfied that there is any good reason to give Cott a further opportunity to be heard with respect to the issues determined in the October 11, 1995 decision, or to deal with the correctness of that decision.

6. Cott does not assert that it did not receive notice of the September 11, 1995 hearing held with respect to the issue of remedy in this matter. The Notice of Hearing sent by the Board to Cott in that respect is dated June 27, 1995. It specifies that "The Board will conduct a hearing for the purpose of dealing with the issue of remedy." It also specifies that: "If you do not attend the hearing, the Board may decide the application without further notice to you and without considering any document filed by you."

7. By itself, this Notice is a rather bare statement of what was going to be dealt with at the September 11, 1995 hearing. However, it must be read in context, not in isolation. Cott was identi-

fied as an interested party in this application from the very beginning and had notice of the proceedings throughout. The company was or ought to have been aware that the determination of this application could affect its interests. It certainly had ample opportunity to obtain advice in that respect. Further, a copy of the January 25, 1995 decision was sent to Cott. That decision sets out all the relevant circumstances and specifically identifies the remedial issue (in paragraphs 46 to 48). That remedial issue was remitted to the parties *and Cott* and permitted any of the applicant, Local 938 or Cott to request a hearing with respect to that issue. That should have constituted a clear indication of the issue and of Cott's interest in it. Combined with the Notice of Hearing, Cott was on notice that the Board could make a determination of the remedy issue which could affect its interests, and that the issue could be determined in its absence.

8. In these circumstances, I am satisfied, as I was when I wrote the October 11, 1995 decision, that Cott had sufficient notice of its interest in the September 11, 1995 hearing, and specifically that whether or not the applicant's grievance should be directed to arbitration was in issue. That is, Cott knew or ought to have known that a result of the hearing could be a remedy which affected (as opposed of being awarded against) its rights or interests.

9. As for the balance of the company's submissions in support of its request for reconsideration, the October 11, 1995 decision reviews the development of the Board's remedial approach to duty of fair representation proceedings (paragraphs 5 to 8), and explains why that general approach, and specifically an order directing that the grievance in this case be taken to arbitration, is appropriate in this case (paragraphs 9 to 14).

10. I find it unnecessary to repeat or expand upon either of those aspects, except to say that because of the time it normally takes to litigate a duty of fair representation application before the Board, such an order must be accompanied by an order requiring the employer involved to waive time limits or objections to timeliness in that respect, either under the applicable collective agreement or otherwise, unless the employer satisfies the Board that such an order is not appropriate in the circumstances. Were it otherwise, such a remedy would often, if not always, be virtually meaningless.

11. In this case, Cott chose not to participate at any stage of the proceedings. That decision may be understandable insofar as the hearing which dealt with the issue of liability is concerned. After all, as I pointed out in the October 11, 1995 decision, even though an employer will be permitted to participate in all stages of such an application if it wishes to do so, the issue of liability concerns the trade union, Local 938 in this case, not the employer. The employer has a direct interest, if at all, if the Board determines that the union has breached the duty of fair representation, when the Board considers the question of remedy. This is because the most common remedy given in such a case is an order requiring the grievance to be arbitrated, and a concomitant order prohibiting the employer from relying on certain rights it might otherwise have at arbitration.

12. In this case, the remedial issue, and the fact that a remedy which would affect Cott's rights or interests had been requested, and that such a remedy might be granted (even though the Board's January 25, 1995 decision expressed some concerns in that respect), was specifically brought to Cott's attention in the January 25, 1995 decision (I note that there is no suggestion that Cott did not receive a copy of that decision.) Indeed, the issue of remedy was specifically remitted to the parties and Cott, while the Board remained seized of the issue, and permitted the applicant, Local 938 or Cott to request a hearing on the issue. Further, and as I have already noted, Cott was sent a notice that a hearing was going to be held with respect to the issue or remedy and that that issue could be determined in its absence if it did not attend, more than two and a half months prior to the hearing. Notwithstanding this, Cott chose not to attend that hearing, and did not otherwise



communicate with the Board in that respect. Accordingly, Cott had an opportunity to make all of the submissions it now makes or seeks to make with respect to the merits of the issue of remedy, but it declined to avail itself of that opportunity.

13. In any event, I remain satisfied that section 96(4) (previously section 91(4)) of the *Labour Relations Act*, 1995 gives the Board the jurisdiction to order a grievance to arbitration, and to order an employer, whether or not a direct party to the proceeding, to forgo legal rights it might otherwise have at an arbitration proceeding, either under a collective agreement or otherwise. Indeed, such a jurisdiction is essential if the Board is to have the ability to provide a meaningful and appropriate labour relations remedy to an employee whose union has failed to represent him/her fairly. An employer cannot avoid such a result by avoiding or its refusing to participate in such a proceeding of which it has had notice.

14. Further, Cott has not specified what prejudice it is that it alleges it has suffered in this case with respect to an arbitration of the applicant's grievance on its merits. Having provided no such particulars, I assume that the prejudice being asserted is that which is inherent in any delay, particularly in labour relations matters. As has so often been said, "labour relations delayed are labour relations defeated and denied."

15. In this case, I am unable to discern any good reason why Cott might have assumed that the matter of the applicant's discharge grievance was a dead issue. The grievance itself was filed and processed through the grievance procedure in a timely manner. This application was filed on December 29, 1992, approximately one month after the applicant was advised by Local 938 that it would not take his grievance to arbitration. Cott received notice of this application, which should have indicated to it that it might have yet have to deal with the applicant's discharge grievance on its merits. Cott also received notice of the March 22, 1993 hearing scheduled for the application and for three other similar applications involving people who had been Cott's employees. At the March 22, 1993 hearing, which Cott chose not to attend, the Board heard the submissions of the parties with respect to certain preliminary issues, which it dealt with in a decision dated April 20, 1993. This decision was also sent to Cott. This application was then scheduled to be heard on August 17, 1993 but was adjourned *sine die* on agreement of the applicant and Local 938. Cott received notice of this as well. By letter dated August 4, 1994, some two weeks before the deadline imposed by the Board's adjournment decision, the applicant requested a hearing for August 15, 1994. At the request of Local 938, that hearing was rescheduled for October 24, 1994, and was then subsequently adjourned on agreement of the applicant and Local 938 to November 18, 1994 when I heard the matter. Cott had notice of this as well. Accordingly, between August 1993 and August 1994 Cott was aware that the matter was not proceeding, but however much it may have hoped, it had no good reason to think that this application or the grievance which is the focus of it had been abandoned. Cott ought to have acted to preserve its evidence and position in that respect. Cott had the opportunity to indicate to the Board that it had reason to think otherwise, or could not reasonably have done more than it did in that respect, or to specify how it would be prejudiced at arbitration at the hearing scheduled to deal with the issue of remedy. It did not do so. Indeed it has not done so even in its request for reconsideration.

16. Finally, a separate issue now raised by Cott concerns the issue of apportionment or liability or any compensation or damages which might be ordered *if the grievance is allowed at arbitration*, and also whether or not that issue should be addressed by the Board prior to arbitration. In the absence of a satisfactory explanation from the applicant (and none has been offered to date), it is not apparent to me that the delay between August 17, 1993 and August 4, 1994 is justified. Subject to a satisfactory explanation from the applicant in that respect, it is not clear to me why Cott should be responsible for paying any compensation which might otherwise be payable to



the applicant if he succeeds at arbitration for any part of that period. The delay during other periods (from January 25, 1995 to April 19, 1995 when the applicant requested a hearing with respect to remedy, for example) may also require some explanation.

17. Having made this comment, I do not find it appropriate to determine the apportionment issue, either with respect to the August 17, 1993 to August 4, 1994 period, or any other period in which undue delay may be alleged. Nor do I find it appropriate to direct the Registrar to schedule a hearing in that respect at this point. Cott could have attended the September 11, 1995 hearing and addressed this issue but it declined to do so. Further, notwithstanding the applicant's success in this application before the Board, it is not certain that he will also succeed at arbitration, or that if he does in the sense of getting his job back that he will necessarily receive compensation retroactive to the date of discharge. It does not seem to me to be a useful exercise to give Cott *another* opportunity to address this issue in circumstances where the issue may be moot, and where even if it is not, no one can say what compensation, if any, there is to be apportioned.

18. In the result, Cott Beverages' request for reconsideration is dismissed.

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#### **4246-94-EP Vince de Paepe, Applicant v. Hydra-Dyne Industrial Cleaning, Responding Party**

**Environmental Protection Act - Board declining to inquire into allegation that employee disciplined contrary to *Environmental Protection Act* for various reasons, including nature and utility of remedy sought, delay in bringing complaint, and fact that subject matter of complaint had previously been subject matter of grievance arbitration under collective agreement**

**BEFORE:** *Pamela Chapman*, Vice-Chair, and Board Members *R. W. Pirrie* and *P. R. Seville*.

#### **DECISION OF THE BOARD; December 5, 1995**

1. This is an application pursuant to section 174 of the Environmental Protection Act ("the EPA"), alleging a violation of that section by the responding party ("the employer").

2. By way of response, the employer submits that the application should not be considered by the Board, as the facts relating to the complaint of the applicant ("de Paepe") have previously formed the subject matter of an arbitration between the employer and the bargaining agent which represents De Paepe, the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers, Local 128 ("the union"). In addition, the employer notes that the applicant's complaints to the Ministry of the Environment have been resolved.

3. The employer's request was forwarded to the applicant for his comments, and we have reviewed his submissions, together with the request of the employer, and the numerous documents filed by each party, in reaching our decision in this matter.

4. Having carefully considered the submissions of the parties, and in the circumstances of this case, we have concluded that we ought to exercise our discretion pursuant to sections 174(4)(b) and (6) of the EPA not to inquire into the complaint. Our reasons for this determination follow.

## THE FACTS

5. The applicant claims that he was disciplined by the employer because he intended to comply with, to seek enforcement of, or to give information concerning, the EPA.
6. In assessing whether or not to inquire into this complaint, we have assumed that the facts as alleged by de Paepe are true and provable.
7. De Paepe claims, and it appears from the documents filed by the employer that it is not disputed, that on March 10, 1994, he approached members of management at the workplace to, in his words, "discuss work related issues...(including) improper dispatching and various wrong doings being committed at the workplace". It is also not disputed that de Paepe and a supervisor then became embroiled in a verbal and physical altercation, in front of several other management personnel and at least one other bargaining unit employee.
8. What is disputed is who started the altercation, and who engaged in the physical aspects of the fight: de Paepe claims that he was assaulted by the supervisor, and indeed he filed an assault charge after contacting the police.
9. De Paepe claims that during the altercation he raised with the members of management present several concerns relating to the employer's compliance with the EPA, including an alleged diesel fuel spill, a hydraulic line which allegedly blew over a storm sewer, and the alleged deliberate dumping of spent oil in the back of the shop.
10. Following the altercation, de Paepe was suspended for three days. He was also warned by the employer that he would be disciplined further, up to and including dismissal, if any similar incidents occurred in the future.
11. De Paepe filed a grievance over the suspension, and it was processed to arbitration by the union. The arbitration hearing was held on August 18, 1994, and the arbitrator dismissed the grievance by a decision dated September 13, 1994.
12. The applicant also attended at the local office of the Ministry of the Environment ("the MOE") and filed a complaint alleging nine violations of the EPA by his employer, on March 24, 1994. These complaints resulted in an investigation by the MOE on April 27, 1994, and a report dated May 2, 1994, which found substantial compliance with the EPA. Since the release of that report, de Paepe has continued to pursue his complaints against the employer, filing an objection to the report, complaining to his local M.P.P., and meeting on several occasions with other officials of the MOE.
13. Prior to filing this complaint, de Paepe explored the possibility of filing a complaint pursuant to section 174 of the EPA with his union, and with a lawyer. On May 9, 1994, he spoke to his union representative about the possibility of the union filing a complaint on his behalf. After consulting with their lawyers and receiving an opinion, a copy of which was provided to the Board by the applicant, the union declined to file a separate complaint to the Board under section 174, and instead decided to pursue the applicant's claim that the discipline was a reprisal for his actions under the EPA as part of the arbitration proceeding.
14. The trial on the assault charges filed by de Paepe against the supervisor was scheduled to proceed on March 28, 1995. This hearing was delayed further to June 22, 1995. At the trial, the supervisor was acquitted of the charges.

15. De Paepe filed this complaint to the Board on February 27, 1995.

### THE LAW

16. Section 174 of the EPA provides as follows:

**174.-** (1) In this section, "Board" means the Ontario Labour Relations Board. ("commission")

(2) No employer shall,

- (a) dismiss an employee;
- (b) discipline an employee;
- (c) penalize an employee; or
- (d) coerce or intimidate or attempt to coerce or intimidate an employee,

because the employee has complied or may comply with,

- (e) the *Environmental Assessment Act*;
- (f) the *Environmental Protection Act*;
- (g) the *Fisheries Act* (Canada);
- (h) the *Ontario Water Resources Act*; or
- (i) the *Pesticides Act*;

or a regulation under one of those Acts or an order, term or condition, certificate of approval, licence, permit or direction under one of those Acts or because the employee has sought or may seek the enforcement of one of those Acts or a regulation under one of those Acts or has given or may give information to the Ministry or a provincial officer or has been or may be called upon to testify in a proceeding related to one of those Acts or a regulation under one of those Act.

(3) A person complaining of a contravention of subsection (2) may file the complaint in writing with the Board.

(4) Where a complaint is filed in writing with the Board,

- (a) the Board may authorize a labour relations officer to inquire into the complaint; or
- (b) the Board may inquire into the complaint.

(5) A labour relations officer who is authorized to inquire into the complaint shall make an inquiry forthwith and shall endeavour to effect a settlement of the matter complained of and shall report the results of the inquiry and endeavours to the Board.

(6) Where the labour relations officer is unable to effect a settlement of the matter complained of, the Board may inquire into the complaint.

(7) Where the Board inquires into the complaint and is satisfied that an employer has contravened subsection (2), the Board shall determine what, if anything, the employer shall do or refrain from doing with respect thereto.

(8) A determination under subsection (7) may include, but is not limited to, one or more of,



- (a) an order directing the employer to cease doing the act or acts complained of;
- (b) an order directing the employer to rectify the act or acts complained of; or
- (c) an order directing the employer to reinstate in employment the complainant, with or without compensation, or to compensate in lieu of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer.

(9) A determination by the Board under subsection (7) applies despite a provision of an agreement.

(10) On an inquiry under this section, the burden of proof that an employer did not contravene subsection (2) lies upon the employer.

(11) Where there is a failure to comply with a term of the determination made under subsection (7), the complainant, after the expiration of fourteen days from the date of the release of the determination by the Board or from the date provided in the determination for compliance, whichever is later, may notify the Board in writing of the failure.

(12) Where the Board receives notice in accordance with subsection (11), the Board shall file in the office of the local registrar of the Ontario Court (General Division) a copy of the determination, exclusive of the reasons therefor, if any, and the determination shall be entered in the same way as a judgment or order of the court and is enforceable as such.

(13) Where the matter complained of has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed, the settlement is binding and shall be complied with according to its terms, and a complaint that a settlement has not been complied with shall be deemed to be a complaint under subsection (3).

(14) The *Labour Relations Act* and the regulations under that Act apply with necessary modifications in respect of a proceeding under subsections (2) to (13).

(15) For the purposes of subsections (2) to (14), an act mentioned in subsection (2) that is performed on behalf of an employer shall be deemed to be the act of the employer.

17. As is clear from sections 174(4)(b) and 174(6), the Board has a discretion as to whether or not it inquires into a complaint made under section 174(3).

18. While the Board has not previously considered in reported decisions the exercise of our discretion under these sections, the phrase “may inquire” is also used in section 91 of the *Ontario Labour Relations Act* (“the Act”), which has been the subject of numerous Board decisions.

19. The Board has commented recently on the considerations relevant to the exercise of that discretion, in *Service Employees International Union Local 204*, (unreported decision dated January 16, 1995, Board File No. 3431-94-U):

... It is important for the Board to expend these limited resources in a way that is consistent with the objectives of the statute, will best accomplish its statutory mandate, and is sensitive to practical labour relations realities. Accordingly, in exercising its discretion under section 91(1) the Board may wish to consider: whether the complaint makes out a arguable case for a breach of some section of the Act; the chance of success; the nature and utility of any remedy that might flow; the cost implications for the parties and the public; and whether, overall, some statutory or labour relations purpose would be served by the litigation exercise.

20. We can see no reason why similar considerations ought not to be relevant to the deci-

sion as to whether or not to inquire into a complaint under section 174 of the EPA, keeping in mind of course the different statutory purpose served by that legislation.

21. The Board has also expressed concerns in numerous decisions about the filing of complaints to the Board after a matter has been adjudicated in another forum. This situation has most often occurred with respect to complaints under section 50 (previously section 24) of the *Occupational Health and Safety Act* ("the OHSA"). The following quote from *H.H. Robertson Inc.*, [1991] OLRB Rep. April 492, at paragraphs 77 to 79, summarizes the Board's view of the problem:

• • •

77. Since 1979, the Board has not been inundated by complaints from wily workers asserting safety concerns in order to obtain an inexpensive review of their employer's actions. What the Board has encountered is the unsuccessful litigant who seeks to recast his complaint as a "statutory" issue in order to obtain another hearing on a matter which has already been the subject of arbitral review under a collective agreement. For example, in *Great Atlantic & Pacific Company of Canada Limited*, [1987] OLRB Rep. May 714, an employee grieved his discharge under a collective agreement, settled that grievance by accepting reinstatement without compensation then, two months later, filed a section 24 complaint to collect the lost wages. The Board said this:

7. When a worker feels that he or she has been affected by a contravention under section 24(1) of the O.H.S.A., subsection (2) requires the worker at some point to make an election of the forum in which he or she will seek a remedy. At some point, a worker must choose either to proceed before the Board or to proceed under the arbitration provisions of the relevant collective agreement. See, *The Municipality of Metropolitan Toronto*, [1986] OLRB Rep. Feb. 283, and the cases cited therein. It is not necessary for us to define with precision at what point the worker must make an election. But having elected one forum and having obtained a determination of the issue in that forum, a worker cannot then attempt to obtain a remedy in the other forum. Implicit in section 24(2) and the choice of procedures set out therein is the recognition of the undesirability of having the same issue litigated in two quite separate forums. We agree with the comments of the Board in *The Municipality of Metropolitan Toronto*, *supra*, at paragraph 10, where the Board stated that the O.H.S.A. issue raised by a grievance is not severable in the sense that one can take the just cause aspect of a discharge to arbitration and the O.H.S.A. aspect to the Board. The issue of whether the discipline was proper is one issue and with respect to that issue a worker must at some point choose in which of the two forums he or she will seek a remedy.

8. In the circumstances before us, Cullen elected to seek a remedy for his discharge by utilizing the grievance and arbitration provisions of the collective agreement between the union and the employer. Cullen's discharge grievance was settled by the union and employer with Cullen's consent. Not only did Cullen seek a remedy under the collective agreement, but a resolution of the discharge grievance was achieved which was acceptable to Cullen. In filing his O.H.S.A. complaint approximately two months after his discharge was settled, Cullen is, in effect, attempting to raise the same issue, namely the propriety of his discharge, before this Board, after agreeing to a resolution of the discharge within the process of the other available forum. The Board finds that this is an appropriate situation in which to exercise its discretion in favour of not inquiring into Cullen's complaint in Board File No. 2785-86-OH.

Similarly, in *Zaley Brothers Limited*, [1989] OLRB Rep. July 810, the Board said:

15. Counsel for the complainant asserted that "the matter" referred to in section 24(2) of the OHSA was only the "OHSA" issue while the Hinnegan award solely dealt with the "illegal strike" aspect. With respect, that approach was rejected in the *Municipality of Metropolitan Toronto*, *supra*, at paragraph 10, in an analysis with which this Board agrees. The "matter" is the *consequence* for the worker imposed by

the employer (as set out in sections 24(1)(a) to (d)), not the reason for the consequence. It is the *reason* for the consequence which is the subject of the adjudication whether before the Board or at arbitration. If the reason is determined to be "because the worker has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations", the consequence is prohibited by the OHSA. Whether before the Board or at arbitration, the employer must articulate its "reason" for imposing the "consequence" on the worker and that reason is subject to the appropriate scrutiny.

Both cases referred to these comments in *Municipality of Metropolitan Toronto*, [1986] OLRB Rep. Feb. 283:

... The "matter" referred to in section 24(2) is the alleged violation of 24(1), namely, that an employer acted to penalize a worker, as set out in sub (a) to sub (d), because the worker complied with or sought enforcement of the OHSA. That issue of improper (or unjust) discipline is the "matter" to be heard at arbitration or before the Board. While the respondent asserts that the undisputed fact that the complainant is no longer an active employee is as a result of layoff, there is no doubt that section 24(1) of the OHSA is integral to the grievance should the grievance be adjudicated in an arbitral forum. The grievance form itself refers to "termination without just cause" rather than improper layoff or some such language. Section 24(1) affords workers a right of protection from penalties for invoking the OHSA; that right is enforceable under the legislation either at arbitration or before the Board. ...

(See also: *Scarborough General Hospital*, [1988] OLRB Rep. Sept. 981; and compare *Everette Chapelle*, [1990] OLRB Rep. Dec. 1238.)

78. None of these cases is precisely on point, but they all support the suggestion that once a worker obtains an adjudication of the propriety of discipline, whether before the arbitrator or the Board, s/he cannot litigate the matter again. The Board has not accepted the proposition that the "contractual" aspects of the discharge (etc.) are severable and properly the province of the arbitrator, while the "statutory" aspects are the province of the Board. What is before the adjudicator in both cases is *the discharge, and an aggrieved worker is expected to raise all of his/her legal challenges to that penalty in whatever forum s/he chooses*. In this regard we are attracted to the view adopted by the Court of Appeal in *Bernier v. Bernier* (1989) 62 D.L.R. 4th 561:

The doctrine of *res judicata* was stated thus by Sir James Wigram V.-C. in *Henderson v. Henderson* (1843), 3 Hare 100 at pp. 114-5, 67 E.R. 313 (Ch.):

In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgement, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

While these comments are obviously made in a different legal context, they embody sensible institutional concerns which we think should inform our interpretation of section 24(2) and 24(7). Thus, in *Amalgamated Transit Union Local 113 and Chapelle*, *supra*, the Board held that an unsuccessful section 24 complainant could not seek to arbitrate the "just cause" of his termination because that matter had already been dealt with or should have been dealt with under section 24(7). A complaint under 24(1) puts in issue general equitable considerations under 24(7), including any effect (in an organized context) of the "just cause clause" in a collective



agreement. Once the Board has addressed 24(7) and refused to exercise its discretion, there is no “just cause” issue left to be determined.

79. In our view, when a worker elects to go to arbitration under section 24(2) he has *his whole case* considered by that arbitrator. He cannot later come to the Ontario Labour Relations Board to pursue the alleged “safety aspect” or assert some anti-safety motive which he neglected to raise or which the arbitrator may not have considered or may have rejected. He cannot claim that the arbitrator is only interpreting the agreement, leaving the statutory breach as a reserve argument to be pursued before the Board. Similarly, if a worker puts his case to the Board under section 24(2), the Board will finally resolve the matter including any application of section 24(7). There is no “contractual part” left over to be pursued at arbitration because, if relevant at all, the contractual part is a “circumstance” which could be and should be raised under 24(7). In our opinion, the OHSA contemplates not only an of *election* under section 24(2) but *one adjudication* of the adverse employment consequence of which the aggrieved worker complains. To put the matter colloquially: the Board or an arbitrator will deal “with the whole ball of wax”.

22. The complaint provisions under section 50 (then section 24) of the OHSA differ of course from section 174 of the EPA, as they include a provision, section 50(2), which specifically provides a worker with an election as to whether to pursue a reprisal complaint at arbitration or before the Board:

50.-(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

23. Even in the absence of such language, however, there are, as the Board said in *H.H. Robertson Inc.*, *supra*, at paragraph 78 quoted above, “sensible institutional concerns” which mitigate against permitting a party to pursue in one forum issues which have already been litigated in another. For these reasons, the Board has applied the doctrine of *res judicata* or issue estoppel not only where the Board itself has already adjudicated on the merits of a case involving the same issue and the same parties, but also where an issue has been decided by another tribunal with concurrent or overlapping jurisdiction.

## DECISION

24. The first factor considered by the Board in determining not to inquire into the instant complaint, and the major factor raised by the employer, is the arbitration previously held concerning the three-day suspension imposed on de Paepe.

25. It seems clear from a reading of the award of arbitrator Lorne E. Dunkley that the issue of the suspension being an alleged reprisal against de Paepe for having raised concerns relating to the EPA was raised by the union at the hearing, and was considered by the arbitrator.

26. In reviewing the parties’ positions on page 1 of the award, the arbitrator notes that it was the union’s position that de Paepe was “at least in part, suspended because he asserted that he would “blow the whistle” on the employer, by reporting certain practices of the employer to the Ministry of the Environment”. In addition, he notes in reciting the facts that the grievor made certain accusations against management during the altercation, including allegations of acts which would violate the EPA, as well as complaints about dispatching. According to both the employer’s and the employee’s versions of the facts, de Paepe also threatened to report the employer to the MOE.

27. The award records that in arguing the case, the union took the position that there was no just cause for a suspension, and also that the employer's actions were tainted by the grievor threatening to call the MOE. The union took the position that the environmental allegations made by de Paepe "sparked" the discipline, and asserted that the arbitrator had the jurisdiction, pursuant to section 45(8)(3) of the Act, to interpret and apply section 174(2) of the EPA to determine that in these circumstances discipline was prohibited. The union also filed cases in support of their argument that the disciplining of the grievor was at least in part due to his threat to involve the MOE.

28. While the arbitrator did not specifically rule on whether or not he had the jurisdiction, pursuant to section 45(8)(3) of the Act, or otherwise, to apply the EPA, he appears nonetheless to have made findings in that regard. Immediately after reviewing the arguments of the parties on this point, he states "the simple fact of the matter is that there was no evidence that the action was retaliatory". He goes on to review the versions of the altercation offered by the witnesses, and decides to accept the testimony of several supervisors concerning the incident. On this basis, he concludes that de Paepe was insubordinate, and that, given two earlier disciplinary warnings for insubordination, on the two days prior to the altercation, neither of which were grieved, a three-day suspension was an appropriate response to this conduct.

29. De Paepe now asks the Board to find that the discipline imposed by the employer on March 10, 1994 was a reprisal for his stated intent to comply with the EPA, despite the arbitrator's prior finding that it was not. In these circumstances, all of the problems which have led to the development of the doctrine of *res judicata* are potentially present, including the possibility of inconsistent factual findings, duplication of proceedings, uncertainty, and obviously significant costs for the parties.

30. This is not to say that the arbitrator's prior ruling prohibits the Board from inquiring into de Paepe's complaint, but it provides a significant reason for our declining to do so. This is a case much like those cited in the *H.H. Robertson Inc.* decision, where a party seeks to have an issue resolved in one forum, and then, unhappy with the decision there, brings it to another. In defending his complaint to the Board, de Paepe states that he was unhappy with the union's presentation of his case at arbitration, and that not all of the evidence which might have supported his version of events was presented, including the testimony of a bargaining unit witness and the disclosure of a tape recording he made of the event. It appears, however, that this evidence was not presented due to de Paepe's desire that his case on the assault charges not be revealed to the employer's counsel prior to his court date. In these circumstances, where de Paepe had an opportunity to present evidence but chose not to, it is not appropriate for him to seek a second hearing of his case before the Board. It is also not clear from the submissions made by de Paepe that the additional evidence would in any event cast any different light on the question of the employer's motivation for the discipline.

31. A second factor relating to our decision not to inquire into the complaint filed by de Paepe is the nature and utility of the remedy sought by him, and the likelihood that it would be granted by the Board. In his complaint, de Paepe asks the Board to "investigate my complaint and act upon it, to use the EPA under section 174 and intervene upon my behalf and invoke the Act to prevent this supervisor from contravening upon someone else". It is not clear, therefore, what specific remedy he is seeking, either from this statement of what he is requesting or elsewhere in the complaint, although he does later mention the need for supervisors at the workplace to be provided with training concerning the EPA.

32. Presuming that a violation of the EPA was established in this case, it appears to the

Board that the most likely remedy would be reversal, or at least a reduction, of the suspension imposed upon de Paepe. It is appropriate, therefore, to take into account in deciding whether or not to inquire into the complaint that the discipline he received does not have a permanent effect on his ability to pursue his livelihood, in the way that a dismissal or demotion, for example, would do. It is also relevant to consider that, even on de Paepe's version of the facts, he engaged in conduct which was insubordinate, quite apart from his accusations concerning the EPA, and that in these circumstances, some discipline might well have been appropriate. Finally, it would of course be relevant in assessing the specific discipline which was imposed by the employer to consider the fact that de Paepe had been given disciplinary warnings for insubordinate conduct on the two days prior to the altercation, which discipline was not grieved. All of these factors give us some concerns about the nature and utility of the remedy which might be provided by the Board were the complaint to be successful.

33. Finally, we have considered the delay in pursuing this complaint to the Board in determining not to inquire into it. The complaint was not filed until almost a year after the events complained of occurred, and more than five months after the release of the arbitrator's decision. The delay to February 1995 is particularly troubling given the letter from union counsel provided to the grievor on May 20, 1994, after he asked the union local to consider assisting him with a complaint under section 174. In that letter, union counsel advises the local that it is not necessary to provide representation to de Paepe on an EPA complaint, but concludes with the statement that "I would simply encourage Mr. de Paepe to bring his complaint on his own behalf *as soon as possible* if he still wishes to do so" (emphasis added).

34. The explanation for the delay provided by de Paepe in his complaint to the Board is essentially that he felt, based in part on advice from a lawyer, that he would be able to resolve this matter at the arbitration hearing or through the criminal trial. When his grievance was lost, and the trial was delayed, he apparently decided to file a complaint to the Board.

35. This explanation is not an adequate one, as it fails to counter, and indeed only confirms, the main prejudice arising from delay of this sort, which is the belief of the other party or parties that the matter has been resolved or at least is not being pursued. The employer had every reason to believe, given that this matter was raised by the union and ruled upon by the arbitrator, that the issue relating to its motivation in imposing discipline, and the challenge to the discipline, was no longer being pursued by de Paepe. His pursuit of the assault charges would have had no impact on that presumption, as the charges relate only to one of the individuals involved, and could not in any event impact on the discipline.

36. For all of these reasons, therefore, we have concluded, as noted above, that this is an appropriate case to exercise our discretion not to inquire into the complaint.

37. The application is therefore dismissed.

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**4402-94-M IWA Canada Local 1-1000, Applicant v. Madawaska Hardwood Flooring Inc., Responding Party v. Bruce Lepine, Intervenor**

**Employee - Employee Reference - Board concluding that, in view of history of dealings between union and employer regarding lead hands who are subject of union's application, no "question" had arisen within the meaning of section 114(2) of the Act - Application dismissed**

**BEFORE:** *Bram Herlich*, Vice-Chair, and Board Members *W. H. Wightman* and *B. L. Armstrong*.

**APPEARANCES:** *Michael Gottheil, Michael McCarter, Brian Brohart, Lori Gibson and Mark Thompson* for IWA Canada Local 1-1000; *Chris White, Dan Palayew, Laurence Prystawski, Ross Staples and Denis Staples* for Madawaska Hardwood Flooring Inc.; *Bruce Lepine* for the Intervenor.

**DECISION OF THE BOARD;** December 13, 1995

1. By decision dated December 7, 1995 the Board, in a "bottom-line" decision, dismissed the union's application under section 114(2) of the *Labour Relations Act, 1995* (the "Act") (formerly section 108(2) of the *Labour Relations Act* (the "old Act")) in this matter. These are the reasons for that dismissal.

2. As a result of a prior ruling of the Board (differently constituted) dated August 2, 1995, this matter was listed to be heard together with two other related matters (Board File 4643-94-R, an application for a declaration terminating the union's bargaining rights brought by Bruce Lepine, one of the four persons who are the subject of the union's instant application under section 114(2); and Board File 0585-95-U, an application under section 96 of the Act (formerly section 91 of the old Act), in which the union has alleged that the responding party (also referred to as the "employer" or the "company") has committed various violations of the Act).

3. Despite that ruling, the parties indicated in writing and confirmed at the commencement of the scheduled hearing that they had agreed to a different manner of proceeding. More specifically, they agreed that the Board ought to hear the employer's motion to dismiss the instant application in a preliminary fashion. They had also agreed (although precise positions on this point were subject to some variation both at and, apparently, subsequent to the hearing of the employer's motion) that the Board adjourn some of the scheduled hearing dates in order to allow for a decision on the employer's motion prior to the continuation of the hearing in this or the other enumerated Board Files, as the case may be.

4. The following facts were agreed to by the parties, but only for the purposes of the employer's motion:

1. The trade union was certified on May 31, 1993 for a bargaining unit which excluded, amongst others, "... forepersons, persons above the rank of foreperson ...". For the purpose of establishing the list for the count in the Application for Certification it was not challenged that the persons who were Lead Hands fell within the bargaining unit description.
2. Eventually, the Employer and the trade union commenced bargaining for the collective agreement. That collective agreement contained

as Article 2.01 a bargaining unit description which reflected the Certificate issued by the Board.

3. During the bargaining for that collective agreement, the trade union raised concerns about the status of Lead Hands as “employees” within the meaning of the *Labour Relations Act* and took the position that the Lead Hands be excluded from the bargaining unit.

The employer took the position that the Lead Hands were employees within the meaning of the *Act*. The trade union Representative advised that if the matter was not resolved in collective bargaining the trade union would make an Application under the *Act* to determine this issue.

4. The issue of the status of the Lead Hands was discussed again after the parties had completed negotiations but prior to the Ratification and signing of the collective agreement.

The employer spokesperson, Brian Smeenck, asked the trade union Representative, Michael McCarter, what the trade union intended to do about the Lead Hands. McCarter replied that either the Lead Hands were excluded or the trade union would bring an Application.

Smeenck responded that the parties had just concluded a 14-month collective agreement and the trade union should wait to see how the matter worked out (i.e. with the Lead Hands in the bargaining unit). McCarter indicated he would speak with his bargaining committee.

After doing so, McCarter advised Smeenck that the trade union would not pursue the issue at that time but that they remained unhappy and that, if they continued to be so, the issue of the Lead Hands’ status would be raised in the next round of bargaining and an Application brought, failing resolution.

5. At all times subsequent to the execution of the collective agreement the Lead Hands have had their terms and conditions of employment governed by the collective agreement.

For the purposes of this preliminary objection, the trade union is not making its Application on the basis that the Lead Hands were formerly employees within the meaning of the *Act* (i.e. at the time of Certification) and are now managerial by virtue of substantial change to their duties and responsibilities.

5. In addition to these agreed facts certain other background facts were asserted and undisputed; for the most part these facts emerge from the Board’s record in relation to the three files in question. The collective agreement negotiated between the union and the employer commenced its operation as of February 15, 1994 and was to continue until its contemplated expiry date of March 31, 1995. An initial termination application was filed by Mr. Lepine on or about February 7, 1995 (Board File 3953-94-R). Subsequent to the dismissal of that application the union filed the instant section 114(2) application on March 13, 1995 (to repeat, Mr. Lepine was among

the four persons the union, in that application, claimed were not employees within the meaning of the Act). On March 21, 1995 Mr. Lepine filed a second termination application. The parties in the termination application met with a Labour Relations Officer on April 19, 1995 and entered into a written agreement in respect of that file. In particular, the union, subject to its specific challenge to the inclusion of the four persons subject of the 114(2) application on either the list for purposes of the count or the voters' list, agreed to the voluntariness of the petition and to the consequent holding of a representation vote. Pursuant to a decision of the Board (somewhat differently constituted) dated April 19, 1995, that vote was held on May 4, 1995. The margin of difference in respect of the ballots counted was less than the number of segregated and yet uncounted ballots. The vote therefore remains inconclusive and is likely to remain so at least until the relevant challenges in that file are disposed of. Indeed, the finality of the vote in the termination application is further called into question as a result of the union's section 96 application which asks, at least alternatively, that the Board direct a new representation vote in the termination application.

6. This decision, however, while it clearly arises in the context of the facts and various applications just outlined, is, by definition and given the parties' agreement as to the nature of the motion being made and considered, limited to the instant application.

7. The employer, after reviewing some of the facts we have just adverted to, advanced two separate though related arguments to support its motion to dismiss the application. The first argument springs directly from the Board's jurisprudence regarding these types of applications; the second proceeds within the framework of the equitable doctrine of promissory estoppel, the principles of which it is said are or ought to be applied explicitly or implicitly in the Board's interpretation of section 114(2). In view of our ultimate conclusion with respect to the first argument we have not found it necessary to plumb the depths of questions of promissory estoppel and the applicability of the doctrine in relation to the exercise or protection of statutory rights.

Section 114(2) of the Act provides:

114. . . .

(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

The parties referred us to quite a number of authorities in support of their respective positions. The cases we have found most helpful to our deliberations include *The Windsor Star*, [1988] OLRB Rep. Apr. 427; *Fleetwood Ambulance Services*, [1988] OLRB Rep. Sept. 886; *Superior Ambulance Services*, [1988] OLRB Rep. Oct. 1129; and *London Free Press Printing Company Limited*, [1993] OLRB Rep. Oct. 977; we have also considered *CAA Northeastern Ontario Auto Club*, [1994] OLRB Mar. 208.

8. Both the *Windsor Star* and the *London Free Press* cases pointed the Board's section 114(2) jurisprudence in new directions. Prior to *Windsor Star* the scope of the Board's examination (usually effected through a Labour Relations Officer) into the duties and responsibilities of the relevant persons varied depending on when and in what circumstances the question arose. Without purporting to exhaust or comprehensively detail the caselaw which preceded and was, to some extent, overtaken by *Windsor Star*, we can point out that, for example, formerly if a 114(2) status question arose during the period of operation of a collective agreement, the Board's examination was generally limited to new duties and responsibilities or changes to pre-existing ones. Where, however, the question arose in the course of bargaining for a collective agreement, the scope of the Board's inquiry would not be so limited. The *Windsor Star* decision ended that variation in the



scope of the Board's inquiry which is no longer limited to "changes". That innovation, while undoubtedly significant, is of little direct relevance in the instant case.

9. A number of other aspects of the Board's jurisprudence were affirmed in the *Windsor Star* decision. And while the Board no longer distinguishes between a "full" inquiry and one restricted to "changes", some of the Board's pre-*Windsor Star* jurisprudence will be of assistance in determining whether and how a "question" has "arisen" within the meaning of section 114(2) such that the Board will inquire into the status issue on the application of one of the collective bargaining parties. In *Westmount Hospital*, [1980] OLRB Rep. Oct. 1572 (cited in *Windsor Star*) the Board had also liberalized its approach to section 114(2) (then 95(2)) applications and observed as follows:

4. The parties, however, are currently bound by the collective agreement entered into on May 12, 1980. Where parties have by virtue of their collective agreement or other form of agreement settled upon the employment status of a person, the Board at one time refused to let either party at any time withdraw unilaterally from that agreement by means of an application under section 95(2) of the Act. (See, for example, *Belleville General Hospital*, [1975] OLRB Rep. June 487). The basis for this policy is that a party having entered into an agreement on the status of a particular person, cannot, in the absence of a material change in duties and responsibilities, come before the Board and claim that a "question" exists as to the status of that person. More recently, the Board has liberalized this policy so as to permit an application to be brought during negotiations for the renewal of a collective agreement, after the collective agreement has expired. Parties therefore are no longer bound indefinitely to the terms of an initial agreement. The Board will not however, permit an application (other than one relating to *changes* in the duties and responsibilities) to be brought during the first set of negotiations following agreement upon the status of the person in question (*Collingwood General Marine Hospital*, [1975] OLRB Rep. Jan. 18). Nor will it permit a full application to be brought during the term of a collective agreement, unless it is satisfied either that the position is a new one arising during the term of the collective agreement, or that the applicant prior to entering into the collective agreement expressly reserved its right to bring a subsequent section 95(2) application on the person in dispute. Otherwise the applicant will be taken to have acquiesced in the position of the other party, and to have accepted it at least for the term of that collective agreement. The Board upon receipt of an application under section 95(2) during the term of a collective agreement therefore automatically limits the appointment of a Board Officer in inquiring into *changes* in the duties and responsibilities since the date the agreement was entered into (e.g. *Ontario Hydro*, [1975] OLRB Rep. July 560). If the applicant feels that the appointment should not be limited to "changes", it may write to the Board setting out its reasons, and the Board may hold a hearing to deal with the proper terms of the appointment.

10. Again, while the Board in *Windsor Star* did away with the artificiality associated with distinguishing "full" from "restricted" examinations, it did affirm some aspects of the analysis of the *Westmount Hospital* case. For example, at paragraph 14, the Board offered the following:

... The Board must be satisfied a "question" has arisen as to the "employee" or "guard" status of the individual(s) in dispute before a duties and responsibilities examination will be directed. Where the individual's status has not been previously determined by the Board in a certification or earlier 106(2) [now 114(2)] application or by specific agreement of the parties, an examination will generally be directed. Where the Board has previously determined the status of a person in a certification application or prior section 106(2) application or where the parties have reached a specific agreement as to the person's status, the Board will not permit evidence as to the person's duties and responsibilities to be adduced before a Board officer unless the Board is satisfied, on the face of the application, that it appears the mischief against which section 1(3)(b) or section 12 is directed has arisen or has ceased. Where the Board is not so satisfied, the application may be dismissed without a hearing. In the Board's opinion, this policy does not undermine agreements of the parties as to person's status and avoids repeated or frivolous examinations, yet provide sufficient flexibility to adequately respond to circumstances where the mischief against which sections 1(3)(b) and 12 are directed has arisen or has ceased.

11. That kind of approach has been affirmed in subsequent Board decisions such as the two ambulance service cases cited above. In both cases, which are factually quite similar to each other, the Board was satisfied that a “question” arose between the parties and, consequently, appointed a Labour Relations Officer to inquire into the matter. Both cases concerned individuals who had been excluded from the bargaining unit at the time of certification some 6-8 years earlier. Despite the apparent history of that exclusion, the Board relied, *inter alia*, on the undisputed fact that in each case the applicant had raised the issue during the last round of negotiations and had explicitly reserved its right to seek a determination under (the predecessor to) section 114(2).

12. The decision of the Board in *London Free Press* can also be characterized as a further liberalization of the Board’s approach to section 114(2) applications. Unfortunately, there is a continuing lack of understanding within some quarters of the labour relations community regarding the relative scope and adjudicative functions of arbitrators and the Board in respect of certain issues of employee status and inclusion in the bargaining unit. Under section 114(2) the Board is limited to determining whether or not an individual is an employee (or a guard) within the meaning of the Act. Where the “real issue” between the parties is whether the person in question is included in the bargaining unit, the Board’s determination may not conclusively decide that issue which may have to be referred to arbitration. Prior to the *London Free Press* decision, the Board was inclined to decline to inquire into such applications where it doubted the value in proceeding, e.g. where it appeared that the real issue necessitated an arbitration hearing. In *London Free Press* the Board acknowledged that its legislative mandate is to make a determination as to whether the subject person is an employee or a guard whether or not that finding is likely to solve the real issue between the parties.

13. The Board may be seen in that case to be suggesting that it should not shirk its statutory mandate to decide an issue the Legislature has conferred on it out of some paternalistic sense (however warranted) that it is better placed to know what determinations will serve the parties’ interests and solve their labour relations problems. (Indeed, we note that there may well have been similar sentiments at play in this case where the Board permitted the parties to alter the manner of proceeding, despite a previous ruling directing a different procedural route.) But even if that is a fair characterization of the *London Free Press* decision, the Board felt compelled (at paragraph 14) to make clear that there must be a “question” between the parties regarding the “employee” or “guard” status of a person before the Board has jurisdiction to deal with the matter under section 114(2) of the Act. The responding party in that case asserted that the issue of the disputed “positions” had been raised and withdrawn by the applicant in the most recent round of negotiations and that, as a consequence, the issue raised in the 114(2) application had been settled for the duration of the collective agreement between the parties and should therefore not be entertained by the Board. The Board was sufficiently troubled by this assertion that it set the matter down for hearing on that issue before making an Officer appointment. It did so because of its view that if the responding party’s assertion was correct, there may have been no “question” within the meaning of section 114(2) to be determined by the Board thus necessitating the dismissal of the application.

14. It is the application of the Board’s approach in the cases just canvassed that leads us to the conclusion that at the time the application was filed, no “question” had arisen between the employer and the union regarding the status of the persons who are the subjects of the application.

15. First, we must clarify that the parties have agreed that, at least for the purposes of the instant motion, the union is not suggesting that there have been any significant changes to the duties and responsibilities of the lead hands which, in turn, give rise to the kind of mischief a section 114(2) application can cure. Neither, of course, has there been any suggestion that it has been the creation of new positions which has given rise to the application. To return briefly to the issues



dealt with in the *Windsor Star* case, the distinction between “change” and “status quo” based applications will still have some significant residual importance. Where a person occupies a newly created position or type of position or where it is significant and important changes to a person’s duties and responsibilities which give rise to the application, it is much easier to imagine that a “question” has “arisen” between the parties. On the other hand where some status quo has been established as a result of the history of dealings between the parties regarding the relevant persons and where no specific change or innovation gives rise to the application, it may be more difficult to conclude that a “question” has “arisen”. The instant case clearly falls into the latter category of “status quo” applications.

16. At the time of certification the persons in question were included on the list of employees for the purposes of the count (although there may have been only three rather than the current four lead hands). The parties having effectively agreed that these persons were employees (and in the bargaining unit), it is difficult to see how any question regarding the status of those persons could have arisen in the context of the certification application (in this regard see the *CAA* case, cited above). Similarly, had a section 114(2) application followed on the heels of the certification, it is equally difficult to see how (in the absence of any indication during the certification process that a live issue remained - as is often the case when, for example, the Board, following the precedent established in *Robin Hood Multifoods Inc.*, [1985] OLRB Rep. July 1159, certifies an applicant and leaves any outstanding status issue to the parties’ negotiations and a possible return to the Board under section 114(2)) one might suggest that a question had arisen between the collective bargaining parties (see again the *CAA* case as well as *Collingwood General Marine Hospital*, [1975] OLRB Rep. Jan. 18, cited in the *Westmount* case, *supra*).

17. The parties’ agreed facts indicate quite clearly that the question of the exclusion of lead hands from the bargaining unit (though not necessarily by means of an alteration to the scope clause) was an issue raised by the union in the negotiations which culminated in the first collective agreement. And although the union may have been unhappy with the result, the issue was ultimately resolved in those negotiations. Further, not only did the union not specifically reserve any right to file an application with the Board (as had been done in a number of cases reviewed earlier in our decision), rather, it explicitly acknowledged that it would not pursue the issue any further but if the union remained unhappy the status issue would be raised in *the next round of bargaining* and failing resolution at bargaining an application under section 114(2) would be brought.

18. There is simply nothing in the parties’ agreed facts or in the argument advanced by the union to suggest that the next round of bargaining had begun, that the issue of the lead hands’ status had been raised and not resolved, and that the union had, consequently, brought the instant application. That, simply put, was not the basis of the union’s argument before us. Indeed, when pressed on when the parties contemplated that the status issue could arise, the union boldly asserted that it ought to have been entitled to bring its section 114(2) application as early as the day following the execution of the collective agreement. In the circumstances described, such an assertion is clearly inconsistent with the Board’s jurisprudence and with any notion of finality or reliability which must be associated with parties’ settlements, an absolutely fundamental building block of any functioning collective bargaining regime.

19. Finally, we deal briefly with a further argument advanced by the union. The union’s agreement that a vote be held in the termination application was predicated, it is argued, on the union’s express right to pursue its 114(2) application. The facts do not bear out this assertion and certainly not to the extent suggested by the union.



20. The document signed by the parties at the conclusion of their meeting with the Labour Relations Officer lists four persons challenged by the union as "managerial". Attached is an asterisk leading to the notation "\* see IWA's 108(2) application #4402-94-M". The parties agreed that the ballots marked by challenged individuals would be segregated. The report concludes with the parties acknowledging that they "consent to the Board issuing a decision without any need for the Board to consider at a hearing the matters dealt with above which are not in dispute but recognize however, that a hearing will be required to deal with certain outstanding matters, namely: the challenges raised by the responding party concerning the list."

21. Thus, while the union's consent to the taking of the vote was certainly not unconditional, the parties did not expressly agree that the section 114(2) application would proceed or that if it did the employer would be precluded from advancing any possible defence or preliminary objection.

22. It was for these reasons that we concluded that, in view of the history of the dealings between the union and the employer regarding the persons who are the subject of the union's application, no question had arisen within the meaning of section 114(2) and the union's application was consequently dismissed.

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### **3759-93-R Ontario Nurses' Association, Applicant v. Niagara-On-The-Lake General Hospital, Responding Party**

**Bargaining Unit - Certification - Employee - Board finding that Discharge Planning Co-ordinator working at public hospital employed in confidential capacity in matters relating to labour relations - Discharge Planning Position excluded from bargaining unit - Final certificate issuing**

**BEFORE:** *Roman Stoykewych*, Vice-Chair, and Board Members *S. C. Laing* and *K. Brennan*.

#### **DECISION OF THE BOARD;** December 21, 1995

1. This is an application for certification.

2. In a previous decision of the Board dated February 21, 1994, the applicant was granted a certificate on an interim basis pending the determination of a dispute between the parties as to whether the position of "Discharge Planning Co-ordinator" ought to be excluded from the bargaining unit granted to the applicant. The employer had taken the position that the position ought to be excluded on the grounds that the incumbent performed managerial functions and was engaged in a confidential capacity within the meaning of Section 1(3) of the Act. The trade union took the position that the duties performed by the incumbent did not give rise to the prohibitions to inclusion set out in section 1(3) and that therefore, the position ought not to be excluded from the bargaining unit description. The parties were unable to resolve their dispute upon the issuance of the interim certification decision.

3. In accordance with the Board's usual practice in these matters, it appointed an officer to inquire into and report on the duties and responsibilities of the disputed individual. The evidence was transcribed in the officer's report. Upon release of the officer's report, both parties were extended an opportunity to make representations as to the conclusions which the Board should

reach in light of the evidence, and both parties took that opportunity. Our decision, therefore, is based on the evidence contained in the report and the written representations received from the parties.

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4. At the time of the application, the responding party hospital was a relatively small facility consisting of approximately 40 beds for chronic care patients. In addition to the bargaining unit that is the subject of this application, certain of the other employees of the Hospital were represented by the SEIU.

5. The incumbent, who is a Registered Nurse, was employed as the Discharge Planning Co-ordinator for approximately 17 years at the time of the application, and was due to retire shortly thereafter. She worked on a part-time basis, averaging approximately 2.5 days per week. Generally speaking, her job required her to assume responsibility for programmes of care and treatment of the hospital's patients upon their discharge. It appears that this normally involved her in making the necessary arrangements for an appropriate placement in a nursing home or the provision for follow-up treatment for patients returning to a home setting. These functions, including programme design, were performed in consultation with other health professionals at the hospital in a "team" setting. Despite the Hospital requiring the position to be staffed by a Registered Nurse, the incumbent reported to the Hospital's Executive Director, rather than to the Director of Nursing.

6. Given the relatively small size of the Hospital, the incumbent was the only person engaged in her "department" and, the evidence revealed, during the course of her seventeen years at the Hospital, she did not directly supervise any other employee. The evidence discloses that the incumbent's sole involvement in the hiring process consisted of her participation in the selection of her successor. It is unclear in the evidence whether such activity occurred prior to or subsequent to the application date.

7. The incumbent exercised considerable independence in the course of her work. At a general level, she was responsible for developing and implementing the Hospital's policies as they relate to discharge planning, and her input was sought by the Hospital's directors and accountants with respect to her departmental budget. It is clear, however, that she did not participate in the actual setting of the budget, whether it be at the departmental or hospital-wide level. Although the evidence was less than entirely clear on this point, it appeared that she had the authority to spend up to \$1,000.00 annually without further authorization; thereafter, her independent spending and budgetary powers were rather limited.

8. The hours worked by the incumbent varied according to the demands of the work, which required her to be present virtually on a full-time basis on some weeks, while providing her with "weeks off" on others. She was entirely free to set her own hours in accordance with these needs, and required no authorization or permission to be absent from work. However, the total number of hours she was permitted to work in the year was constrained by the annual budget of her department, which allocated a set number of hours. She was remunerated on an hourly basis.

9. Considerable emphasis was placed by the employer on the incumbent's regular attendance at meetings with members of management and, in that respect, that she was considered part of the "management team" by the hospital. However, the weekly "multi-disciplinary" meetings, while including persons who are "managers" within the hospital, and which featured a consensual decision-making process in which the incumbent participated, was almost exclusively concerned

with the treatment of patients and in that respect, is of little relevance to the exclusions from collective bargaining sought by the employer.

10. More significant in that respect are the monthly "Department Managers' Meetings" attended by the incumbent. These meetings were attended by the various department heads of the Hospital, including the incumbent, and were chaired by Ms. Karen Tribble, the Hospital's Executive Director. The topics of discussion at these meetings were wide-ranging, and included various policy and operational issues confronted by the Hospital. Prominent amongst these topics were budgetary issues, such as the Hospital's implementation of cutbacks, including lay-offs; the development of the Hospital's strategy with respect to "Social Contract" negotiations; reports on the status of collective bargaining with the SEIU and management's strategy in this respect; and discussion of pending discipline and discharge matters. It appears that a certain amount of the information presented at such meetings was already public knowledge, or was disclosed to the participants for the very purpose of its wider dissemination. Nevertheless, a significant component of this information, comprised mostly of management's strategies relating to collective negotiations and grievances, was clearly not intended to go beyond the circle of the participants of the meeting.

11. The evidence is clear that the incumbent was an active and regular participant in these meetings, and that she took part fully in the development of a consensus with respect to the matters discussed at the meeting, whether or not they were related to labour relations. On that basis, it was suggested that the incumbent was involved in the actual decision-making process in relation to these matters. In this respect, however, it is useful to consider the purpose served by the monthly "Department Managers' Meetings", particularly as it is described in the evidence of Ms Tribble, who also testified before the officer. Since the Hospital is a small one, it does not have an operational "senior executive committee". That function was served through *ad hoc* consultations by the Directors of Finance and Nursing with the Hospital's Executive Director. The Department Managers' Meeting, Ms Tribble testified, was for the purpose of disseminating information to the appropriate levels of Hospital personnel, on the one hand, as well as serving as an "advisory group" for her and the Directors on the other hand. Although the advice given by the group was considered by the directors and the Hospital Board in the course of its operational decisions, it is clear that these decisions were not taken at the department manager's meetings.

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12. Underlying both the "managerial" and the "confidential" exclusions set out in the *Labour Relations Act* is a concern over the collective bargaining process placing persons engaged by employers into situations involving a conflict of interest. The Board has generally considered two distinct aspects of the managerial function with this purpose in mind. In circumstances where individuals perform in a direct supervisory capacity over others, on the one hand, the Board will exclude them from collective bargaining where the decisions, or the "effective recommendations", they make have a material impact upon the terms and conditions of employment of those they supervise. Accordingly, the Board will generally view persons who hire, fire, promote, discipline or grant substantial wage increases as performing "managerial functions" and will be subject to exclusion. On the other hand, the Board will exclude as managerial persons who, although performing no direct supervisory role, nevertheless exercise a high degree of decision-making authority with respect to matters that impact upon the broader organization and the working conditions of others. The Board's concern, in this respect, is to ensure for the employer that the members of its "managerial team" not be subject to divided loyalties as a result of participation in collective bargaining. (See, in particular, *City of Thunder Bay*, [1981] OLRB Rep. Aug. 1121.)

13. While the separation of collective bargaining interests has been a principal concern in



this context, nevertheless, the Board has been sensitive to the various and evolving forms of organization of work and in particular, to the circumstances of the employment relationships of professional and technical employees. Especially in the hospital and nursing home sectors, the Board has been careful to distinguish between the exercise of independent discretion that is inherent in the practise of a profession from directions of a supervisory or managerial nature. (*Royal Ottawa Hospital*, [1980] OLRB Rep. Apr. 524.) Similarly, the Board has been alert to the distinction between diffusion of decision-making within a professional work environment and a shift of effective decision-making power. As the Board stated in *Oakwood Park Lodge*, [1982] OLRB Rep. Jan. 84:

Modern business organizations - especially those employing professionals, - encourage the free flow of information and ideas of subordinates to superiors. Consultation and involvement in the decision-making process improve communications in both directions, clarify the employer's problems and objectives, improve employee morale, and make optimum use of employee ingenuity and expertise. "Participatory management styles" have become a prevalent technique in large organizations for reducing employee alienation and increasing commitment to the goals of the employer. And, in small organizations, consultation is inevitable because of the small number of individuals who must work together effectively if the goals of the organization are to be realized. One should not conclude, however, that the existence of consultation, or an apparent "democratization" of decision-making, means that real managerial authority has percolated downwards.

14. Similarly, the Board has understood that the purpose of the confidential capacity exclusion is to ensure for the employer that its internal strategies and communications in the labour relations context are known exclusively by persons of undivided loyalty. (*J.M. Schneider Inc.*, [1987] OLRB Rep. Mar. 381; *Town of Ganonoque*, [1981] OLRB Rep. July 1010.) Accordingly, where the handling of information relating to the employer's collective bargaining strategies and operations forms an integral part of the disputed individual's job functions, and where the disclosure of such information by him or her would adversely affect the interests of the employer *vis a vis* the trade union, the Board will generally find the person not to be an employee for purposes of the Act, and therefore, not entitled to associate for collective bargaining purposes. (*York University*, [1975] OLRB Rep. Dec. 945, *supra*; *Falconbridge Nickel Mines Ltd.*, [1966] OLRB Rep. Sept. 379; *Frito-Lay Canada*, [1978] OLRB Rep. Sept. 831; *CLRB v. Transair Limited and Canadian Association of Industrial Mechanical and Allied Workers, Local No. 3*, 76 CLLC Par. 14,024 (S.C.C.))

\* \* \*

15. Bearing these considerations in mind, and based upon the evidence set out in the officer's report, we are not persuaded that the duties performed by the incumbent in the Discharge Planning Co-ordinator position are such as to cause the Board to exclude her position on managerial grounds. It is clear that her position entails no direct supervisory or evaluative role with respect to other employees at the Hospital. In this regard, her role in the hiring of her replacement can hardly be considered a constituent part of her position. Moreover, the highly independent work she performs, while requiring considerable exercise of professional or technical judgement, nonetheless takes place within a fairly concrete set of budgetary guidelines and, more importantly, her decision-making in this respect does not appear to affect the employment destinies of other employees.

16. Finally, we are not persuaded that her membership on the management team, or her attendance at the department head meetings, in themselves involve her in decision-making functions in relation to labour relations. The issues discussed at such meetings, although of considerable concern and importance to the Hospital's management, are clearly not resolved at such meet-

ings. In this respect, we accept the evidence of Ms Tribble that the meetings are primarily consultative in nature, and that the real decisions affecting the matters discussed by the participants of the meeting are made at a significantly higher level of the Hospital's administrative structure. Accordingly, we cannot conclude that the incumbent exercises managerial functions and that she should be excluded from collective bargaining on that basis.

17. Nevertheless, in the Board's view, the incumbent's participation in the department manager's meeting raises a substantial possibility for conflict of interest on confidentiality grounds. As noted, the monthly meetings involved the incumbent in discussions of a wide range of matters, including the employer's strategies for collective bargaining and the handling of individual grievances. The evidence indicates that these matters are not otherwise known to employees. While, as we have found, her participation in such discussions did not involve the incumbent in the making of effective decisions with respect to these matters, she nevertheless would become apprised of information in the course of such meetings that would without question significantly affect the employer's ability to conduct its labour relations were they to become known to the trade union.

18. The Board is conscious that the incumbent's possession of such confidential information in relation to labour relations results from the employer's practice of its dissemination to a person at a non-decision-making level, and in this respect, it would be possible for the employer to structure its affairs otherwise. However, given the incumbent's longstanding and full participation in the department heads' meetings, and her operational integration at the department head level in the other respects of her work, we are not persuaded that the possession of this information is merely incidental to her position. Under such circumstances, we are not prepared to include her position in the bargaining unit on that basis. Accordingly, the Board is satisfied that the incumbent, as a regular part of her job, is advised of information relating to the grievance and collective bargaining strategies of the employer, and that a conflict of interest would therefore likely arise were her position to be included in the bargaining unit granted the applicant. Therefore, the position of "Discharge Planning Co-ordinator" shall be excluded from the bargaining unit granted to the applicant.

19. Having regard to the foregoing, to the decision of the Board dated February 21, 1994 and to the provisions of the *Labour Relations Act* the Board finds that the following unit is appropriate for collective bargaining:

all registered and graduate nurses employed in a nursing capacity by Niagara-On-The Lake General Hospital in the Town of Niagara-On-The-Lake in the Region of Niagara, save and except Nurse Managers, persons above the rank of Nurse Manager and Discharge Planning Co-ordinator.

20. A final certificate shall issue.

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**3415-94-JD** Electrical Power Systems Construction Association and **Ontario Hydro**, Applicants v. International Brotherhood of Electrical Workers, Local 1788 and Labourers' International Union of North America, Local 1059, Responding Parties

**Construction Industry - Jurisdictional Dispute - IBEW and Labourers' union disputing assignment of certain hand digging and backfilling work at base of transmission towers during course of line refurbishment project - Board confirming assignment to IBEW on basis of economy and efficiency and because other factors considered not favouring one union or the other**

**BEFORE:** *D. L. Gee*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

**APPEARANCES:** *M. Patrick Moran*, *Ron McFadden*, *Don Nielson*, *Ros Rioux*, *Scott Williams* and *Rick Currie* for the applicants; *David McKee* and *Al Diggon* for International Brotherhood of Electrical Workers, Local 1788; *John Moszynski* and *Jim McKinnon* for Labourers' International Union of North America, Local 1059.

**DECISION OF D. L. GEE, VICE-CHAIR, AND BOARD MEMBER F. B. REAUME:** December 6, 1995

1. This is an application under section 93 of the *Labour Relations Act* (the "Act") concerning an assignment of work in the construction industry. Pursuant to the provisions of section 93, a consultation was held on October 26, 1995.

2. The work in dispute is as follows:

The hand digging and backfilling of earth at the base of the tower legs of transmission towers during the course of a line refurbishment project on the following portions of the Ontario Hydro grid:

- (i) Buchanan T.S. to Woodstock T.S. (1993 to 1994);
- (ii) St. Mary's to Devizes Junction (1995).

3. The applicants, Electrical Power Systems Construction Association and Ontario Hydro, seek an order confirming the assignment of the work in dispute to members of the International Brotherhood of Electrical Workers, Local 1788 ("Local 1788"). Local 1788 agrees with the relief sought by the applicants. The Labourers' International Union of North America, Local 1059 (the "Labourers") seeks an order that the work in dispute should have been assigned to its members.

4. The work in dispute was performed as part of a project undertaken by Ontario Hydro commencing in the spring of 1993. The project consists of inspecting and replacing worn out steel and conductors on its transmission towers in Southwestern Ontario. The project was divided into several components. As indicated above in the description of the work in dispute, two of the components are the subject of this application. The project is ongoing.

5. The brief filed by the applicants indicates that the work on each component of the project was performed in two stages. The first stage involved checking the tower's integrity while the line was live which involved:

- (a) hand digging an area approximately 24" wide and 18" deep around the grillage foundation of the towers;



- (b) inspecting the steel at the tower base for corrosion;
- (c) brushing and cleaning the steel;
- (d) applying a protective coating if necessary;
- (e) bolting reinforcement steel to either side of the tower legs where required; and
- (f) backfilling the dirt around the tower legs.

6. Once the first stage was completed, the second stage, which does not form part of the work in dispute, was performed. The crew which performed the work involved in the second stage of the project included members of both Local 1788 and the Labourers.

7. The applicants' brief indicates that employees working around the towers are exposed to electrical hazards as the work is done on the towers while the line is live. The electrical current from a discharge to ground could be lethal and consequently proper education and safety training is of paramount importance. It is asserted that Local 1788 members are trained to recognize safety problems whereas not all members of the Labourers are.

8. The applicants rely on three similar projects which were assigned to Local 1788 crews in the past as establishing a past practice. The projects in question were field assignments for which no mark-up meetings were held.

9. The brief filed by Local 1788 describes the manner in which the crew, comprised of a foreman and six crew members, performs the work involved in the first stage of the project as follows. Generally speaking, the crew is divided into two groups. The first group works ahead of the second group. It digs up the earth around the tower leg, performs some scraping and cleaning around the bolted areas of the leg, removes all of the bolts, adds a new reinforcing plate (if necessary) and fastens new bolts in place. When the first group is finished the second group completes scraping and cleaning the steel and paints it. The paint is then allowed to dry and the dirt is back-filled at a later time by whoever is available.

10. Local 1788's brief indicates that, although the above description sets out how the work is generally performed, such is not always the case. If the line runs through an area of bush, the cleaning of the tower base and digging may take longer, in which case it is more efficient to have every person in the crew performing the same work on each tower leg up to the point of painting.

11. It is further stated that the time it takes to hand dig around a tower leg varies. In good conditions, the task takes as little as five minutes per leg. In poor conditions it may take up to an hour. The initial cleaning and changing of bolts takes at least one hour. If reinforcing steel has to be added, it will take longer.

12. It is asserted in Local 1788's brief that the work in dispute (the hand digging around the base of each tower leg and later backfilling) cannot be segregated into work for a single person. The brief indicates that, if the work in dispute was assigned to a member of the Labourers, it would require linemen in the first group to stand idle while a labourer dug around each of the legs of the tower. The labourer would then stand idle for some period of time (as much as one hour) while linemen performed the other functions. The labourer could not work too far ahead of the members of Local 1788 as the tower legs cannot be left exposed for too long. Further, the work in question would amount to no more than two days worth of work per week. Thus, if a member of

the Labourers must be assigned the work in dispute, it would involve either the constant hiring and lay-off (or stand-off and recall) of one labourer with the consequent requirement of paying travel time each week or paying a labourer to stand around for the majority of the week. The number of members of Local 1788 needed to perform the work would not be reduced.

13. At the hearing of this matter, counsel for the applicants and Local 1788 gave an oral description of how the work is performed that went into greater detail than the description set out in the briefs (summarized above). Given that the Labourers had no opportunity to review and investigate such additional details in advance of the consultation, only the description of how the work is performed as contained in the briefs has been considered by the panel in reaching its determination.

14. The applicants and Local 1788 assert that the assignment of the work in dispute to members of Local 1788 should be confirmed on the basis of economy and efficiency, skills and safety, employer preference and past practice.

15. The Labourers agree with the applicants and Local 1788 as to the nature of the functions involved in performing the work in dispute. The Labourers assert that, where severable from and not integral to other work, hand digging and backfilling are labourers' work. The Labourers assert that the applicants and Local 1788 have failed to put any evidence before the Board which establishes that the hand digging and backfilling functions are not severable from the remaining functions performed by members of Local 1788 and accordingly, the work in dispute is labourers' work. The Labourers assert that, because the applicants did not specifically plead that the digging and backfilling was not assigned exclusively to one or more persons, there is no basis for an assertion that the work could not be performed by a composite crew composed of an equal number of members of the Labourers and Local 1788. It is asserted that a labourer need not stand idle while the member of Local 1788 inspects the steel, but rather can go on to dig around the next leg or backfill previous legs.

16. The Labourers dispute the electrical hazard alleged by the applicants and point out that, in some cases, towers are located within feet of a public sidewalk. Further, they assert that members of the Labourers typically receive safety training with respect to safety hazards.

17. The Labourers assert that Ontario Hydro has a general past practice of assigning all hand digging and backfilling to members of the Labourers. Numerous minutes of various mark-up meetings were submitted to the Board.

18. The Labourers submit that all factors generally considered by the Board in determining the outcome of a jurisdictional dispute favour the assignment of the work in dispute to members of the Labourers.

### **Decision**

19. In decisions concerning work assignments, the Board generally considers the following factors:

- collective bargaining relationships
- trade union agreements between the competing trade unions
- area practice
- employer practice
- safety, skill and training
- economy and efficiency
- employer preference

20. In the present case, both the Labourers and Local 1788 have collective bargaining relationships with the applicants. Neither the EPSCA - IBEW collective agreement nor the EPSCA - OACTC collective agreement helps to resolve the dispute. No trade agreements between the two unions relating to the work in dispute were provided to the Board.

21. The area practice relied upon by the applicants is comprised of field assignments which were made in the absence of mark-up meetings. As the Board determined in *Ontario Hydro*, [1993] OLRB Rep. Mar. 227, because of the manner in which field assignments are made, such assignments are generally given less weight by the Board. The Labourers provided the Board with copies of minutes of numerous mark-up meetings upon which they rely to establish that Ontario Hydro has a past practice of assigning digging and backfilling to members of the Labourers. The brief filed by the Labourers does not provide the Board with a description of the work to which the minutes relate or explain how the work to which the minutes relate is similar to the work in dispute. It appears that the projects relied on by the Labourers relate to dissimilar work. For example, some of the minutes relate to the construction of a new transmission line or new construction. Accordingly, the past practice evidence relied upon by the Labourers does not establish that Ontario Hydro has a past practice of assigning work, similar to the work in dispute, to members of the Labourers. It is our determination that the factor of past practice does not favour either the Labourers or Local 1788.

22. With respect to skill and safety, although the briefs filed by the applicants and Local 1788 assert that the work involves electrical hazards because the work is performed while the line is live, they do not explain the safety hazard that exists for the individual who performs the digging (it is not contended that the backfilling presents an electrical hazard). As the photographs provided in the Labourers' brief indicate, towers can be located within very close proximity to public sidewalks. Additional details of the electrical hazard involved in the performance of the work provided by counsel orally at the hearing have not been considered by the panel as the Labourers did not have prior notice of such information or an opportunity to prepare to respond to it in advance of the consultation. Based on the submissions contained in the briefs, we are not persuaded that the work poses an electrical hazard of such a nature as to require the extra safety training of a Local 1788 member. Members of both unions have the requisite skill to perform the work in dispute. As a result, it is our determination that the factor of skill and safety does not favour either union.

23. Thus, we turn to the factor of economy and efficiency. As set out above, the briefs filed by the applicants and Local 1788 explain the manner in which the work is performed and assert that it is impossible to segregate the work in dispute and assign it exclusively to a labourer for reasons of economy and efficiency. Local 1788's brief states that to do so would result in a maximum of two days of work per week for a labourer. The labourer would spend the rest of the time standing around waiting for the Local 1788 members to catch up to him or would have to be constantly laid off and recalled. There would be no reduction in the number of Local 1788 members on the crew.

24. At the consultation, the Labourers took serious issue with the Board relying on the description of how the work was performed provided by the applicants and Local 1788. The Labourers assert that the descriptions contained in the briefs (and provided by counsel at the hearing which, as indicated above, we have not relied upon in coming to our decision) do not constitute "evidence". It was suggested that the applicants or Local 1788 should have filed affidavits or declarations from the crew members or filed supporting documentation. The Labourers did not assert a different version of how the work was performed - only that the version asserted by the other parties was not sufficient and did not constitute evidence upon which the Board could come to a decision.



25. In our view, the description of the work provided by the applicants and Local 1788 is sufficient for our purposes. Section 93 (now section 99) gives the Board the power to determine a jurisdictional dispute without holding a hearing. The Board's procedures, which provide for dealing with jurisdictional disputes by way of consultation, are designed to avoid lengthy and costly litigation and have the matter determined as quickly as possible. The Board has been handling jurisdictional disputes by way of consultation, relying solely on the information contained in the briefs filed, for almost three years. That the Board would rely on the information contained in the briefs filed by the applicants and Local 1788 in the instant case, where no contrary version of the facts is put forward by the Labourers, is not unusual.

26. In the present case, counsel for Local 1788 contacted members of the crew who were working in a remote location and obtained a description of how the work is being performed. This description was set out in Local 1788's brief in some detail. The Labourers were provided with a copy of Local 1788's brief well in advance of the consultation. It had the opportunity, if it wished to do so, to conduct its own investigation into how the work is being performed and present the Board with a description of such at the consultation. In the absence of even an assertion from the Labourers that it has information that the description given by local 1788 is inaccurate, we see no reason not to rely on it for the purposes of our determination.

27. Based on the description of how the work is performed as contained in Local 1788's brief, it is our view that the functions of hand digging and backfilling are not severable from the other functions performed. Requiring Ontario Hydro to assign the work in dispute to members of the Labourers would result in serious inefficiencies. The digging and backfilling is a very minor part of the work being performed. Of the total 35 working days that the seven-man crew works on the project each week, the hand digging and backfilling functions would fill only two. Digging the hole can take as little as five minutes. The following repair work can take over an hour. The subsequent backfilling of the hole takes minutes. Clearly the digging and backfilling time for each leg of the tower is much less than the time required to inspect and repair the leg. If a member of the crew is assigned to only digging and backfilling, that individual would spend a considerable portion of his/her day standing around or would work for a day or two (working ahead of the rest of the crew which cannot be done to any great extent) and then be laid off. Given the remote location of the towers, Ontario Hydro would be required to pay travel pay.

28. As a result, it is our determination, based solely on the description of how the work is performed contained in the briefs filed with the Board, that economy and efficiency favours assigning the work in dispute to members of Local 1788.

29. The only factor which favours one union or the other favours Local 1788. Accordingly, we see no reason to change the assignment of the work in dispute.

**DECISION OF BOARD MEMBER J. REDSHAW; December 6, 1995**

1. I dissent.

2. I cannot agree with my colleagues that the description of the work actually performed is clear. In my opinion the description of the work described by the applicant and IBEW Local 1788 is mostly hypothetical. The oral submissions only served to further cloud the issue. Labourers Local 1059 was not helpful in that they did not tell their version of how the work was actually carried out.

3. In my opinion, I would have had the parties, in written submissions, describe the work performed in detail.

4. I feel that there is too much confusion to allow me to decide who should have performed the work.
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**0777-95-U United Steelworkers of America, Applicant v. Pembroke Civic Hospital, Responding Party**

**Change in Working Conditions - Unfair Labour Practice - Board finding that employer's discontinuation of short term benefits payable to laid off employee contrary to disability plan and violating statutory freeze**

**BEFORE:** *Kevin Whitaker*, Vice-Chair, and Board Members *J. A. Ronson* and *Pauline R. Seville*.

**APPEARANCES:** *D. Doorey* for the applicant; *C. Piette* for the responding party.

**DECISION OF THE BOARD;** December 19, 1995

1. This is an application under section 96 of the *Labour Relations Act* (the "Act"), alleging that the respondent has breached the provisions of section 86(1) (formerly 81(1)). The applicant alleges that, following the receipt of notice to bargain, the respondent changed the terms and conditions of employment contrary to the statutory provisions.

2. At the hearing, the parties agreed to proceed on the basis of an agreed statement of fact. On a review of the facts and submissions made at the hearing, this application is allowed. What follows is our reasons.

**The Facts**

3. The applicant was certified as bargaining agent for employees of the respondent on October 24, 1994. On November 14, 1994, the applicant provided the respondent with written notice to bargain.

4. Erik Hawthorne was at all relevant times employed by the respondent and a member of the applicant's bargaining unit. After having been given a series of notices of layoff that were rescinded prior to their effective dates, Mr. Hawthorne was laid off on February 28, 1995. The applicant does not challenge the lay off.

5. Prior to the layoff, on February 7, 1995, Mr. Hawthorne stopped working due to an injury. He applied for and was granted short term sickness benefits for a five week period beginning on February 7, 1995 and ending on his last day of employment. He had also been in receipt of the same benefits for an earlier period of sickness from January 13 to 28, 1995. Between January 28 and February 7, 1995, he had returned to work. Mr. Hawthorne had applied for and been denied benefits under the *Workers' Compensation Act* for the periods of absence referred to in this paragraph. The denial of benefits was on the basis that he had not suffered a work related injury.

6. The short term sickness benefits paid to Mr. Hawthorne by the respondent were made pursuant to the Hospitals of Ontario Disability Income Plan (HOODIP). This plan is self funded and operated by hospitals in Ontario. It provides for short term benefits to be paid directly by an

employer, and for long term benefits to be paid out of a pool funded jointly by all of the employer hospitals participating in the plan.

7. Other than the facts in Mr. Hawthorne's case, we have no evidence before us as to how the respondent has interpreted and administered the HOODIP plan in the past. What was agreed to however by the respondent was that a pamphlet prepared by the Ontario Hospital Association (OHA) and provided to employees, was the employer's representation to employees as to their entitlement to benefits under HOODIP.

8. Following Mr. Hawthorne's last day of employment on February 28, 1995, the respondent discontinued the short term benefits that had been payable to him under HOODIP. The respondent claims that this action was consistent with the terms of the policy as described in the pamphlet provided to employees. The respondent also asserts that whether or not that action was consistent with the policy, it was a reasonable interpretation of the policy made in good faith. The applicant does not question the good faith of the respondent in terminating benefits. It argues however, that the respondent's actions in this regard are contrary to the HOODIP policy and because of that, amount to a breach of section 86(1) of the Act.

### Analysis

9. It is undisputed that the provisions of section 86(1) were in effect at all relevant times. The parties also agreed that the "reasonable expectations" approach to determining whether there has been a breach of the "freeze" provisions of the Act is appropriate. The applicant relied on the Board's decision in *Trim Trends Canada Limited* [1987] OLRB Rep. April 623 for a formulation of the question to be posed in determining whether there has been a breach of what is now section 86(1). The respondent agreed that this characterization was correct. At paragraph 16 in *Trim Trends*, the Board poses the following question:

What would the reasonable expectations of the employees in the bargaining unit have been at the time the freeze took effect...

10. The applicant's argument was that the discontinuation of short term benefits to Mr. Hawthorne was inconsistent with the HOODIP policy described in the brochure. The applicant asserts that an employee is entitled under the plan to the continuation of benefits where the employment relationship ends if the benefits vested prior to the termination of employment. Given the agreement by the respondent that the pamphlet represented to employees what they could expect, the discontinuation of benefits was contrary to the reasonable expectations of the employees and therefore a breach of section 86(1).

11. The respondent argued that the discontinuation of benefits was consistent with the policy as described in the pamphlet. Its interpretation is that when the employment relationship ceases, all entitlement under the plan expires. Alternatively, if it was not, the respondent argued that the decision was a reasonable interpretation of the policy as described in the pamphlet and was made in good faith. In those circumstances it was argued, it could not amount to a breach of section 86(1).

12. The first issue to determine is the dispute of fact as to whether the policy as described in the pamphlet contemplates the termination of benefits on the cessation of employment. The respondent asserts that the provision in the pamphlet entitled "Termination of Coverage" states that "coverage under this Plan will terminate when you (1) cease employment". It is upon this reference that the respondent relies to prove that benefits cease with employment. The applicant distinguishes between the "Duration of Benefits" and "Termination of Coverage" provisions in the



pamphlet. On the applicant's analysis, the term "coverage" applies to determine when a person is eligible to receive benefits, while the term "benefits" applies to the monies received under the plan.

13. It is agreed that both the "Duration of Benefits" and the "Termination of Coverage" provisions apply equally to short term benefits and long term benefits.

14. The applicant argued that where rights vest under a contract or collective agreement, they survive the life of the term of the contract unless there is specific language to the contrary. It relied on the decisions of the Supreme Court of Canada in *Dayco (Canada) Ltd. v. C.A.W.-Canada* (1993) 102 D.L.R. (4th) 609 dealing with this issue in the context of a collective agreement and in *Vorvis v. Insurance Corporation of British Columbia* (1989) 58 D.L.R. (4th) 193 where the context was a private contract of employment. Again, the respondent didn't suggest that these principles were not correct. It argued that the specific language of the pamphlet governed and that it clearly extinguished entitlement for ongoing benefits upon the expiry of the employment relationship.

15. The factual issue put squarely before us was whether the language of the pamphlet described sick benefits as being terminated on the severance of the employment relationship. Our answer to that question is that it does not.

16. The pamphlet which describes the benefits is brief, spanning only two pages. Like most benefit plans, there is a description of who is entitled to make a claim, what the benefit amounts are and under what circumstances will they be paid and/or discontinued. In our view, the section entitled "Duration of Benefits", describes those circumstances under which the receipt of benefits will be discontinued. For short term benefits, they will be payable for up to a period of 15 weeks. For long term benefits, there are a number of types of events which will terminate the receipt of benefits, including when you cease to become disabled or turn 65 years of age. The section entitled "Termination of Coverage" applies in our view to how and where a person would have the coverage of the plan, thereby entitling them to claim benefits. It makes sense that someone who was not employed by the respondent would not be entitled to claim benefits. Not surprisingly, the coverage for this reason terminates with the employment relationship.

17. The respondent argued however that even if benefits have vested, the provisions under the heading "Termination of Coverage" mean that benefits stop being payable when the employment relationship ends. If this were the case, an employer under this plan would always be able to avoid the payment of benefits by terminating an employee who might otherwise qualify. Given the nature of long term disability coverage, it would mean that virtually every long term claim could be avoided by terminating an employee who would otherwise not be employable. On this point we would refer to *Illness and Disability in the Workplace* Canada Law Book (updated May 1995) where the authors state at page 5-17, paragraph 5:3400:

Similarly, employees who are currently in receipt of disability benefits should not otherwise be rendered ineligible simply because of a termination of employment.

18. This is not to say that the terminology in the pamphlet is perfectly consistent and unambiguous. The term "benefit" is used interchangeably in some places with the notion of "coverage". It would appear however that where the term "benefit" is used in the singular, it refers to coverage. Where it is used in the plural as in "benefits", it means the actual monies paid out to a claimant. In other words, the "benefit" is the coverage, and "benefits" are the monies paid out to a claimant who qualifies for a period of time under the plan.

19. This leaves the respondent's last argument which is that even if they are wrong on their interpretation of the pamphlet, there has been no breach of the "freeze" provisions because the decision was reasonable and made in the absence of bad faith.

20. A review of the jurisprudence does not support the respondent's argument on this point. We have some difficulty in any event with the idea that the reasonable expectations of employees in this case in reading a pamphlet would be different from the employer's. Perhaps a number of interpretations of the pamphlet might be reasonable, but in the circumstances of this case, we do not see the employer's reading of the scheme of benefits as a reasonable one. Similarly, whether there was bad faith or not is in our opinion irrelevant to the analysis. In this case, no bad faith is alleged, however, the statute refers only to the prohibition not to change working conditions.

21. For these reasons, we dismiss the respondents suggestion that an act that would otherwise be contrary to section 86(1) is somehow saved by virtue of the fact that the respondent viewed its own conduct as reasonable and that it was done in good faith. We certainly have sympathy for employers who in trying to do the right thing fall short, but that is not in the scheme of section 86(1) a defence to this application. We would also note the respondent's agreement with the principles governing the application of section 86(1) as set out in *Trim Trends* and noted above.

22. Having found that the pamphlet describing benefits does not contemplate the termination of benefits with the cessation of the employment relationship, the last question is whether this was the reasonable expectation of employees. We have no evidence before us of what the employer's practice was in the administration of short term benefits prior to this claim except for their admission that the pamphlet was the representation made to employees about the provision of sickness benefits. We conclude on this evidence that employees would reasonably expect on a reading of the pamphlet to continue to receive benefits that have vested past the termination of employment in the circumstances of Mr. Hawthorne. Despite the wording in the pamphlet, if the respondent had called evidence to prove that its practice known to employees was according to its reading of the pamphlet, we would find that this would likely determine a reasonable employee's expectations. In the absence of this evidence, we find that there has been a breach of section 86(1).

23. On the issue of remedy, the parties agreed at the outset that any remedy would be binding only on the respondent and would not deal with the provision of long term benefits, thereby possibly affecting other parties. Accordingly, we order as follows:

1. That the respondent has breached the provisions of section 86(1) of the Act;
  2. That the respondent is obliged to reinstate, effective February 28, 1995, the short term sickness benefits payable to Mr. Hawthorne, consistent with the Board's determination of the provisions of that benefit reflected in this decision;
  3. That the respondent pay to Mr. Hawthorne, interest on any benefits payable but withheld to the date of payment;
  4. That the panel remain seized to deal with any matter arising out of this order or its implementation.
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**1336-95-R The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, Applicant v. Labourers' International Union of North America, Local 183, Responding Party v. Metropolitan Toronto Apartment Builders Association; Toronto Residential Construction Labour Bureau; Toronto Housing Labour Bureau; Ontario Formwork Association; Residential Framing Association; and Ontario Concrete & Drain Contractors Association, Intervenors**

**Accreditation - Bargaining Unit - Construction Industry - Practice and Procedure - Residential Low Rise Forming Contractors Association applying for accreditation - Applicant and Local 183 of Labourers' union agreeing on appropriate bargaining unit - Board finding unit appropriate despite objections of Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau - Board setting "employer date" and directing that employers listed on Schedules "E" and "F" receive notice of application and of hearing**

**BEFORE:** *D. L. Gee*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

**APPEARANCES:** *Carl Peterson* and *Harold Piccininni* for the applicant; *A. M. Minsky* and *A. Pinto* for the responding party; *Joseph Liberman* and *Richard Lyall* for Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau; *Pino Celsi* for Ontario Concrete & Drain Contractors Association; *Ernesto Arduini* for Ontario Formwork Association; *Carlo D'Ambrosio* for Residential Framing Association; no one appearing on behalf of Toronto Housing Labour Bureau.

**DECISION OF THE BOARD;** December 11, 1995

1. This matter is an application for accreditation, filed on June 30, 1995 under section 127 of the *Labour Relations Act*. On November 10, 1995, the *Labour Relations and Employment Statute Law Amendment Act, 1995* was given Royal Assent, thereby bringing into effect the *Labour Relations Act, 1995*. The differences between the *Labour Relations Act* and the *Labour Relations Act, 1995* have no bearing on this case. The section numbers referred to in this decision are as they were under the *Labour Relations Act*.

2. A hearing was held on November 7, 1995 for the purpose of hearing submissions on the issue of the appropriate bargaining unit.

3. The applicant and the responding party are in agreement that the unit of employers should be described as follows:

all employers of employees engaged in concrete forming construction for whom the responding party has bargaining rights in the County of Simcoe, the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Township of Esquesing and the Towns of Ajax and Pickering in the Regional Municipality of Durham in the residential sector of the construction industry.

*For purposes of clarity*, it is noted that the said work involves residential concrete forming construction, including single and semi-detached houses, row houses, maisonettes, town houses and apartment buildings of hearing [sic] wall construction to and including ground floor and balconies, but not other high rise buildings, as set forth in Article 1.02 of the collective agreement between the parties hereto. It is also noted that employers bound by and who perform work under any of the following collective agreements in accordance with past or existing practices as at the date hereof are not included in the said unit of employers, namely:



- (a) Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario.
- (b) Collective Agreement between the Metropolitan Toronto Apartment Builders' Association and the Responding Party.
- (c) Collective Agreement between the Toronto Housing Labour Bureau and the Responding Party.
- (d) Collective Agreement between the Residential Framing Contractors Association of Metropolitan Toronto and Vicinity and the Responding Party.
- (e) Collective Agreement between the Ontario Concrete and Drain Contractors Association and the Responding Party.
- (f) Collective Agreement between the Utility Contractors Association of Ontario and Labourers' International Union of North America, Ontario Provincial District and its affiliated Local Union.
- (g) Collective Agreement between the Restoration Contractors Association of Ontario and the Responding Party.

4. The Ontario Formwork Association (an employers' association representing employers who perform high rise concrete forming in the residential sector), the Ontario Concrete and Drain Contractors Association and the Residential Framing Association support the application and the appropriateness of the unit of employers as set out above.

5. The Metropolitan Toronto Apartment Builders Association ("MTABA") and the Toronto Residential Construction Labour Bureau ("TRCLB") submit that the unit sought is not an appropriate unit. The MTABA and TRCLB assert that the unit should either include all employers bound to the Low Rise Forming collective agreement *and* the collective agreements excluded by paragraphs (a) through (e) and (g) of the unit sought, or should include all employers bound to the Low Rise and High Rise Forming collective agreements referred to in the application.

6. In support of the position that the unit should include all employers bound to the Low Rise Forming collective agreement and the collective agreements excluded by paragraphs (a) through (e) and (g) of the unit sought, counsel for MTABA and TRCLB indicated that Local 183 bargains with a number of employer groups that represent contractors who perform various types of work including low rise concrete forming, high rise concrete forming, framing and sewer and watermain work in the residential sector of the construction industry. Although the bargaining is not done together, and it was not suggested that any employer group has any influence with respect to the negotiations of any other employer group, it is asserted that the bargaining is conducted contemporaneously and involves work in the same sector of the construction industry. In addition, there are cross-over clauses in the various agreements that have the effect of binding employer groups to the other collective agreements in the residential sector. It was submitted that, in order for the accreditation order to give effect to the manner in which bargaining actually takes place, the unit must include all employers who employ employees in concrete forming which includes all employers bound by the cross-over clause.

7. In support of the alternative position that the unit must include all employers bound to the Low Rise and High Rise Forming collective agreements, counsel submits that what the Board is being asked to do in this case is to accredit the applicant for a portion of the residential sector. If the unit is described in the terms agreed to by the applicant and Local 183, the applicant will effectively be accredited to represent employers who perform low rise concrete forming in the residen-

tial sector. In counsel's submission, the Board has said that it is reluctant to divide a sector and will not do so unless there are compelling reasons. Counsel relies on *Metropolitan Plumbing and Heating Contractors Association*, [1973] OLRB Rep. April 199.

8. Counsel for the applicant and Local 183 submit that the Board's task is to determine the appropriate unit for collective bargaining and that section 128 of the Act contemplates the accreditation of an employers' association for a unit of employers described in terms of part of a sector. It is argued that the language of section 127 of the Act envisages that the unit of employers will be predicated on the scope and nature of the bargaining rights established between the applicant and the union. The applicant and Local 183 submit that the Board's jurisprudence establishes that the Board typically determines the appropriateness of the unit by asking whether the unit proposed accords with the existing bargaining structure and whether it is a viable unit for collective bargaining purposes.

9. Counsel submit that the bargaining pattern in existence supports the appropriateness of the unit sought. Counsel dispute that the fact that the applicant's agreement is negotiated at the same time as other agreements in the residential sector is of any significance. Literally dozens of collective agreements were negotiated contemporaneously this past summer. It will happen again in 1998 when such agreements are renegotiated. The fact that agreements are negotiated at the same time in no way suggests (nor did counsel for MTABA and TRCLB do so) that the employer groups bargain together or have any say in one another's negotiations. Each employer association bargains on behalf of its own employer group and enters into separate collective agreements which have their own unique characteristics. A finding that either of the units proposed by the intervenor is appropriate, would effectively over-ride existing collective agreements. Further, the agreements excluded from the bargaining unit description in paragraphs (a) to (e) and (g) are not an exhaustive list of Local 183's residential sector collective agreements.

10. Counsel for the applicant and Local 183 point out that the applicant has been bargaining for years on behalf of the employers in the unit it has proposed. It does not represent employers who engage in high rise concrete forming. The association which represents employers engaged in high rise concrete forming supports this application. The applicant is simply trying to codify a bargaining structure that has been in place for some time.

11. The applicant distinguishes *Metropolitan Plumbing and Heating Contractors Association*, *supra*, on the basis that the applicant, who represented employers who performed work in both the high rise and low rise portions of the residential sector, and the responding party, were in agreement that the unit be described in terms of all of the residential sector, and that it was an intervenor that was attempting to have the unit described in terms of part of the residential sector. The applicant relies on *Independent Plumbing & Heating Contractors Association*, [1987] OLRB Rep. May 734 in which the Board subsequently accredited an employers association for a unit described in terms of the low rise part of the residential sector of the construction industry.

### Decision

12. Sections 127 and 128 of the Act provide as follows:

**127.** Where a trade union or council of trade unions has been certified or has been granted voluntary recognition as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area



described in the said certificates, voluntary recognition documents or collective agreements, as the case may be.

**128.**-(1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.

(2) The unit of employers shall comprise all employers as defined in section 119 in the geographic area and sector determined by the Board to be appropriate.

13. Section 127 provides that, where a trade union has entered into collective agreements with more than one employer that cover a unit of employees in the construction industry, an employers' organizations may apply to be accredited as bargaining agent for all employers in a particular sector and in the geographic area *described in the collective agreements*. Thus, the language of section 127 suggests that the unit described in the collective agreements to which the union is a party is a unit for which the employers' organization may apply to be accredited. Section 128 the Act mandates the Board to determine the unit of employers that is appropriate for collective bargaining and stipulates that, if it considers it advisable, the Board may combine areas or sectors or parts thereof. Thus, as the Board ruled in *Independent Plumbing & Heating Contractors Association*, [1987] OLRB Rep. May 734 at paragraph 8 and *The Heavy Construction Association of Toronto*, [1973] OLRB Rep. May 245 at paragraph 18, while the Board is mandated by section 128 of the Act to determine the unit of employers appropriate for collective bargaining, the Board is not restricted from defining the unit by reference to part of a sector where, in the Board's opinion, it is advisable to do so.

14. The Board's jurisprudence establishes that, in determining the "appropriate" unit of employers, the Board considers the pattern of collective bargaining that exists at the time the application is made (see: *Independent Plumbing & Heating Contractors Association*, *supra*, and cases referred to therein). In *Association of Millwrighting Contractors of Ontario*, [1973] OLRB Rep. Oct. 545, the Board, in the course of rejecting an argument that the geographic scope of the unit should not mirror the province-wide scope of the bargaining relationship between the applicant and the respondent, suggested that, absent reasons to the contrary, where a stable bargaining relationship exists, the unit will be described in terms of the established bargaining structure. To the extent the Board's decision in *Metropolitan Plumbing and Heating Contractors Association*, *supra*, may stand for the proposition that, in determining the "appropriateness" of a proposed bargaining unit, greater weight will be given to a desire to avoid dividing a sector than achieving a unit that is viable for collective bargaining, we disagree.

15. We turn then to a consideration of whether the unit proposed by the applicant and responding party in the instant case is an appropriate unit. As indicated above, one of the factors the Board considers when determining the appropriateness of a unit is whether it is viable for collective bargaining. The fact that the employers' organization and the union have negotiated successive agreements with respect to the unit sought would tend to suggest that the unit was in fact a viable one.

16. The applicant has represented employers in the unit sought in this application in negotiations with Local 183 in at least two successive rounds of collective bargaining. The applicant is a separate and independent employers' organization that is solely responsible for the conduct of such negotiations. Other employer organizations may be engaged in collective bargaining with Local 183 at the same time, but such organizations have no input into the applicant's negotiations. The applicant's collective agreement with Local 183 contains unique provisions and is a separate agreement from those entered into by other employer organizations. The present collective bargaining



structure, whereby Local 183 has separate agreements with employers depending upon the type of work they are engaged in in the residential sector of the construction industry, has been in place for some time. The Board was not advised of any difficulties or labour relations problems which exist as a result of this bargaining regime. The employers' organization that represents employers engaged in concrete forming in the high rise part of the residential sector of the construction industry support this application.

17. Having regard to the foregoing, it is our determination that the unit, as set out in paragraph 3 above, sought by the applicant is a viable unit for collective bargaining purposes and is an appropriate unit.

18. The employer date in this matter is hereby set as January 15, 1996.

19. At the hearing, counsel for the responding party questioned the need to serve employers on Schedule "F" with notice of this application. For the reasons expressed by the Board at paragraph 27 of *National Capital Roadbuilders Association*, [1988] OLRB Rep. Oct. 1041, regardless of whether a final Schedule "F" is determined in this matter (an issue yet to be decided), employers on the responding party's Schedule "F" are to receive notice of this application. Accordingly, the Registrar shall serve all employers listed on the Schedule "E" and Schedule "F" with notice of the application and of hearing.

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**0868-95-R Canadian Hotel and Service Workers Union, Applicant v. Romzap Ltd. c.o.b. as Sheraton Fallsview Hotel & Conference Centre, Responding Party**

**Certification - Certification Where Act Contravened - Constitutional Law - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing**

**BEFORE:** Dale L. Hewat, Vice-Chair.

**APPEARANCES:** L. Steinberg and J. Ketelaars for the applicant; W.M.A. Amadio, I. Wolfe and T. Zappitelli for the responding party.

**DECISION OF THE BOARD;** December 19, 1995

1. This is an application for certification in which the applicant (or "Union") has requested relief pursuant to section 9.2 of the *Labour Relations Act*, R.S.O. 1990 c.L.2, as amended (the "Act"). On October 3, 1995 I issued a "bottom-line" decision in this matter in which I ordered certification pursuant to the provisions of section 9.2 of the Act. Below are my reasons for the decision. Section 9.2 provides as follows:

**9.2** If the Board considers that the true wishes of the employees of an employer or of a member

of an employers' organization respecting representation by a trade union are not likely to be ascertained because the employer, employers' organization or a person acting on behalf of either has contravened this Act, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.

2. For ease of reference the responding party will be referred to as the "Sheraton"/"Hotel" or the "Employer".

### **Procedural Matter - Notice of Constitutional Question**

3. During the course of the hearing, on July 6, 1995, I ruled on the question of whether the Sheraton could raise a constitutional challenge after the completion of the Union's case. The hearing of this matter commenced on June 26, 1995. On July 4, 1995 the Union's evidence had been completed. On July 5, 1995, the Sheraton served a Notice of Constitutional Question upon the Union and upon the Attorney General of Ontario in which it stated that "it intends to question the constitutional validity of section 9.2..." This issue had not been previously raised by the Sheraton in its response to the application for certification, filed on June 1, 1995.

4. Counsel for the Union argued that the Board should not permit the Sheraton to raise the constitutional question, given the stage of proceedings. He submitted that the Union was prejudiced because the issue was being raised after the completion of its case. Had the constitutional issue been pleaded initially, counsel asserted, the order of proceedings and the nature of the evidence would have been different. Specifically, counsel submitted that evidence would have been required or entertained pertaining to section 1 of the *Charter of Rights and Freedoms*, and that the Charter issue would have been considered first. The case on the merits might not have gone forward. Counsel also argued that insufficient notice had been given to the Attorney General of Ontario, as required by the *Courts of Justice Act*.

5. Counsel for the Sheraton argued that it had the right to raise the constitutional question at any time during the proceedings. He disputed that there was any prejudice to the applicant. Counsel also asserted that sufficient notice had been provided.

6. I ruled that I would not allow the Sheraton to challenge the constitutional validity of section 9.2, given the late stage at which it had been raised. To do so would result in prejudice to the Union, which had just completed its case. Further, the Notice served on the Attorney General was untimely in that it was not served as required by section 109 of the *Courts of Justice Act*, R.S.O. 1990, c.c.43 as amended by S.O. 1994 c.12, s.43. Specifically, the *Courts of Justice Act*, in section 109(2.2), requires that a Notice of Constitutional Question must be served on the Attorney General as soon as the circumstances regarding it become known, and in any event, at least fifteen days before the day on which the question is to be argued, unless the court orders otherwise. Under section 109(6), the provisions in section 109 apply to proceedings before boards and tribunals. Fifteen days notice was not in fact provided. In these circumstances, I was not prepared to entertain the constitutional question.

### **Introduction**

7. The Sheraton operates a hotel and conference centre in Niagara Falls, Ontario. The Sheraton is owned by Romzap Ltd. which holds a franchise agreement with the Sheraton Hotel chain. Given the seasonal nature of the tourist industry in Niagara Falls, the Sheraton's business fluctuates widely during the year. The Hotel typically runs at full capacity between May and October, and experiences a 70-80 percent vacancy rate between November and April. As a result, layoffs are common during the slow season. The current application represents the fifth union organizing effort at the Sheraton since 1990.

8. This Union's organizing campaign began on or about April 1, 1995. The Union asserts that its organizing drive was very successful during April, 1995, but came to a virtual halt in mid-May 1995 as a direct result of meetings held with staff by the President and Director of Operations, Mr. Tony Zappitelli, a poster campaign sanctioned by the Employer, the discipline, harassment and attempt to isolate the key Union organizer, Mr. Bill Wilson, and the circulation of an employer sanctioned petition. During the course of the hearing, the Union advised the Board that the Employer contravened section 82 of the Act based on an allegation that Mr. Zappitelli intimidated and coerced Karen Nicol, one of the the Union's witnesses. The Union asserts that each of the Employer's actions described above constitutes a violation of the Act sufficient to result in satisfying the tests in section 9.2 to cause automatic certification.

9. Much of the evidence regarding the meeting and actions taken by the Employer was disputed. Twenty-one witnesses testified at the hearing. I have carefully considered the evidence of all of the witnesses. Set out below are my factual findings and the legal conclusions with respect to each of the allegations. In making my findings of fact, I have assessed the credibility of witnesses according to the usual criteria including their ability to resist the tug of self-interest in giving their testimony, their demeanour and what is reasonably probable in the circumstances.

10. During closing submissions, counsel for the Sheraton remarked that some of the Union's allegations pertain to events which occurred after the application date. Accordingly he suggested such allegations, even if provable, cannot form the basis for proving that the employees true wishes are unascertainable since the membership evidence had already been submitted to the Board. I have determined that the actions of the Employer on or after the certification application date have been considered as they are relevant with respect to determining whether the true wishes of employees are ascertainable with or without a vote. As well, the actions of the Employer post June 1, 1995 are relevant to examining the conduct in its entirety and in order to assess the initial allegations of the Union. Furthermore, despite the fact that the Employer was aware of the Union's organizing campaign it did not have notice of the application for certification until June 5, 1995. It should also be noted that the pleadings in this case were amended by both parties before the hearing commenced which resulted in an expansion of the 9.2 allegations to include events occurring after the application for certification. All of the evidence pertaining to conduct occurring on or after June 1, 1995 was led and completed without objection of the Sheraton concerning its relevance to the tests in section 9.2. It was only in closing submissions that counsel for the Sheraton objected to the Board's consideration of the evidence regarding events occurring after June 1, 1995. For these reasons noted, I have determined that the events occurring after the application for certification date are relevant to my determination in this case.

### **Findings of Fact**

#### **(i) The Union's Organizing Campaign**

11. Jeff Ketelaars, a business agent with the Union, testified about the organizing drive and how it was affected, in the Union's view, by the various actions of the Employer. Based on Mr. Ketelaars testimony, which was uncontradicted, I find that the Union was contacted in mid-March, 1995 by a former employee of the Sheraton who indicated that the employees were interested in unionization. The Union commenced its organizing campaign on April 1, 1995. According to Mr. Ketelaars, the Union did not seek assistance of inside organizers at the outset of the campaign because of a belief that, in previous organizing drives, the Employer had taken disciplinary action against employees. As result of information that the employees were fearful of being associated with the Union by their Employer, it was decided to attend privately at employees' homes to speak to them about the Union. At the beginning of the campaign, Mr. Ketelaars was provided with the



names of approximately 45 employees by a Sheraton staff member. In April 1995, a few employees approached the Union and indicated their interest in assisting with the organizing drive. Mr. Wilson, a houseman in the housekeeping department, was one of the employees who acted as an internal organizer from mid-April until the application for certification.

12. Throughout April, 1995, the Union collected membership cards, obtaining them from approximately 30 per cent of the potential bargaining unit of 261 employees. The campaign continued into May, 1995, but on May 12, 1995, following a meeting held in the Sheraton's housekeeping department by Mr. Zappitelli, Mr. Ketelaars received telephone calls from four employees requesting that their membership cards be returned.

13. The Union collected a total of 79 membership cards. It was Mr. Ketelaars belief that, after the May 12, 1995 meeting, the employees were terrified Mr. Zappitelli would discover their interest in joining the Union, and as a result, the Union was unable to successfully continue in its campaign for membership. He also received a number of calls from employees requesting their Union cards back. Two membership cards were, in fact, returned. In terms of membership activity, after the May 12, 1995 meeting, the Union collected four cards, two on May 14, 1995 and two on May 25, 1995. The two membership cards signed on May 14, 1995 were signed by employees who had not attended the May 12, 1995 meeting. The application for certification was filed on June 1, 1995.

(ii) **May 12, 1995 Housekeeping Meeting**

14. In early May 1995, Mr. Zappitelli received complaints from some employees from various departments concerning the Union's organizing activity. The complaints, themselves were not before me in evidence for the purpose of establishing unfair labour practices on the part of the Union, but instead were relied on by the Sheraton to explain the actions Mr. Zappitelli took in response to such complaints. Generally, the complaints related to concerns that Union organizers invaded employees' privacy by gaining access to private homes and that organizers were making unrealistic wage promises. The complaints were brought forth by employees from various departments at the Hotel, but not primarily from the housekeeping department. As a response to the complaints received, Mr. Zappitelli met with all scheduled housekeeping staff, at 8:30 a.m. on May 12, 1995. The employees were not advised, in advance, of the purpose of the meeting, nor, once they had arrived, were they offered the option to leave the meeting. The meeting lasted approximately 30 minutes. It was an unusual meeting because it was run by Mr. Zappitelli, and because it was addressed to all housekeeping staff. Normally, Mr. Zappitelli makes only brief appearances at staff meetings to report on hotel business and such meetings usually do not include housemen or laundry staff.

15. I have also determined that this meeting was deliberately directed at the housekeeping staff because most of the union activity was occurring in that department and because two of the internal organizers Mr. Wilson and Ms. Wiley worked in that department. There was inconsistency in Mr. Zappitelli's evidence about when he became aware of the Union's organizing drive. Initially Mr. Zappitelli stated that he did not know about the Union's campaign until early May, 1995. However, in cross-examination, he admitted that he was notified about the campaign on April 5, 1995. It is apparent that the housekeeping department was treated differently than other departments since the housekeeping group was personally addressed by Mr. Zappitelli not only in the May 12, 1995 meeting, but also, in a subsequent meeting on June 2, 1995. In these circumstances, Mr. Zappitelli's explanation of scheduling difficulties for not meeting, to the same extent, with other departments does not seem plausible. The special attention directed to the housekeeping

staff also becomes questionable when measured against the the fact that most of the complaints came from employees of other departments.

16. During the meeting, Mr. Zappitelli read from a memorandum prepared by him, dated May 11, 1995. Following the meeting, this memo was posted and distributed by Mr. Zappitelli throughout the staff areas of the Sheraton. The memo reads as follows:

To Our Valued Employees:

It is obvious that another union organization wishes to certify our employees and thereby become the beneficiaries of weekly deductions from your pay check earned through your hard work.

We would like to point out the following:

- \*You have been receiving benefits that most employees at other hotels do not receive:

- \*Free parking

- \*Free meals

- \*Your own Human Resource Committee

- \*Your own Social Committee, of which the company matches employee contributions

- \*100% paid benefits

- \*Safety Committee

- \*Overall wage increases in 1994 were in excess of 3-1/2% of payroll and will be 4% in 1995. Another unionized hotel in Niagara Falls received only 1.5%.

- \*Company history has reflected a policy to review salaries, benefits and working conditions on an annual basis along with Management Staff.

- \*All employees are covered under the very stringent Labour Standards Act.

- \*The Sheraton Fallsview is a company that works for you and with you, i.e., Market Value Assessment to have taxes reduced, instrumental in attracting a major casino in order to extend our season and create full time jobs.

- \*The Sheraton Fallsview is anxious to attract and keep the best employees in the hospitality industry in the Niagara area. This philosophy has been reflected in salaries, benefits and working conditions.

- \*We are planning another addition which will create more jobs. This will be conditional on acquiring the proper funds, etc.

What can the union do for you besides **Deduct funds from each and every pay check, probably forever?**

Note that the unions no longer seem to be promising job guarantees. As noted before, you are the only one who can guarantee your own job simply by having pride in your work and doing it to the best of your ability. Maintaining the standards and policies of the Sheraton Fallsview Hotel will keep us competitive in the market-place and ensure you ample work.

It is your choice whether or not you are represented by a union. Your employer cannot legally interfere with this right. When you are approached by the union, many arguments will be given to you as to why you should join.

Does favouritism concern you? We have an open and effective Human Resources Committee which you are encouraged to use.

Do you think that there's no favouritism in a union shop?

When a co-worker approaches you to join a union, please ask yourself what their motives are. Is this person a good, honest, reliable worker? Or is he/she pushing for a union to save his/her job? Why are they worried about their jobs? Have they received their last warning because of

substandard performance? This may well be your designated union representative! Is this the person you want to represent you?

You are being asked to sign a membership card and authorize "Canadian Hotel and Service Worker Union, its Agents or Representatives" to act for you:

Do you know who they are? They may be one of the above co-workers.

An employee who lay sick in bed was visited at his house by a union worker who claimed he was from the hotel in order to gain access to his home, with the sole purpose of soliciting his membership. Do you want this type of devious representation?

Would you trust them with your paycheck?

We have not been asked for and we have not given any union your names and addresses. However, they seem to have them anyway.

Tony and Connie drive a 1987 Acura in desperate need of body work. The union representative that has been in your face these past several months drives a new Mustang. These people are salesmen. Sell! Sell! Sell!

Do employees have a right to join a trade union during working hours? Generally speaking, no. This should be done outside of working hours. An employee is not prohibited from getting other employees to sign union cards before or after work.

The employer can, however, take appropriate disciplinary action if the employee's union activities begin to disrupt its business operations.

**Romzap Ltd., as owners and directors of operations of the Sheraton Fallsview Hotel and Conference Centre have specific functions and they are as follows:**

1. Maintain order
2. Maintain efficiency
3. Maintain discipline
4. Hire
5. Retire
6. Manage enterprise
7. Products sold
8. Services rendered
9. Kinds of equipment used
10. Methods employed
11. Controls used
12. Make/alter rules
13. Establish standards
14. Institute new tasks
15. Hours of work
16. Lay off etc.

Union organizers who do not work for this hotel do not have the right to come on this property to try to get employees to join their union. It would be appreciated if these people are reported to management immediately as this is a breach of hotel security.

If 55% of the employees sign a membership card, the union is automatically in,. If 40% sign up, there is a vote held.

Don't let them fool you by the number of signatures they have. Each and every card has to be verified by the Labour Relations Act.

During the last union drive you were told that they had over 50% of the employees signed up. The figures we were given unofficially were 8 cards, less than 3%.



Once a union is in de-certification is very difficult, and we cannot assist you in this.

If you have already signed a card, you still have the time (before certification) and the right to change your mind simply sending a letter to the Labour Relations Board stating that you wish to rescind your enrolment. This is your right and Management can do nothing to assist or encourage you individually to do so.

Labour Relations Board  
400 University Avenue  
Toronto, Ontario M7A 1T7  
(416) 326-7500

To ensure this goes through, it should be done in writing.

Hotel unions have done little or nothing to promote the hospitality industry in the way of job training, (except their own union representatives), and job creation.

Please keep in mind that *no one has the right to coerce you or apply undue pressure as to whether you should join a union or not*. If you feel you are being unduly harassed by union representatives, you should report this to the Labour Relations Board.

"Tony Zappitelli"

Tony Zappitelli

Director of Operations

17. The contents of the memo were not in dispute; however, there were substantial differences with respect to whether Mr. Zappitelli made any additional comments, not set out in the memo, at the meeting. Having considered all of the evidence before me, including Mr. Zappitelli's admission during cross-examination that he made certain comments not set out in the memo, it is my determination that the following statements were made by Mr. Zappitelli at the May 12, 1995 meeting.

18. When Mr. Zappitelli made the statement in the memo about plans to build another addition, conditional on the acquisition of proper funds, he pulled out his pant pockets to display that they were empty and indicated that he personally did not have the funds to build the tower addition. He further stated that he would have to obtain a loan from the bank in order to raise funds for the building addition.

19. In the context of the statement in the memo pertaining to "unions no longer promise job guarantees", Mr. Zappitelli stated that the Sheraton can only pay employees out of profits and that the Sheraton must charge competitive rates because "it is competing with the world". It is also evident that Mr. Zappitelli told employees that the more time he spends dealing with the Union, the less time he will have to spend on increasing business at the Sheraton.

(iii) Postings

20. In addition to posting the May 11, 1995 memo throughout the staff areas of the Sheraton, Mr. Zappitelli prepared and posted a number of other memos and documents during May and early June, 1995. Below is a summary of the postings which were prominently displayed, and in some instances distributed in employees time-slots, so that all information was available to every Sheraton employee.

21. On May 17, 1995, in response to complaints about Union representative conduct, a memo was posted setting out provisions from the Act reminding employees that they have the right to oppose a trade union, or to refuse to join a trade union, subject to a union security clause in a

collective agreement, and that employees have the right not to be discriminated against or penalized by an employer or a trade union because of exercising their rights under the Act. The memo also mentions an employer's right to freedom of expression and advises employees that, should they have any concerns about union harassment, they should write to the Labour Relations Board.

22. On May 19, 1995 a memo entitled "Keeping You Informed" was posted advising employees of the following:

No one can interfere with your decision as to whether to join a Union or not join a Union. Do not be bullied or coerced into signing a Union card if you do not wish to do so.

Do not sign a Union card just for the purpose of putting an end to the conversation or to stop someone from pressuring or harassing you. Once a card is signed, it is very difficult to get it back. If 55% of the employees sign cards, certification of the Union will be automatic even though you may have signed a card only to stop the harassment of the Union organizer.

Do not be rushed into signing a Union Card. Think it over carefully. If you wish, you may tell the Union organizer that you will contact him or her at a later time, once you have thought things out and decide you want to join. Remember, if you sign a card, you may not get a chance to change your mind or even to vote by secret ballot.

If a Union is certified, you will have to pay Union dues whether you signed a card or not. That is the law. I personally do not see why you should have to pay to work here at the Sheraton.

Please bear in mind that once a Union is certified, the Union Executive will make decisions for you. Traditionally, not many people attend Union meetings and therefore the business of the Union, is in fact conducted only by the few people who really attend the meetings. Unfortunately, it is often the persons with an axe to grind with management that usually attend these meetings.

Unions usually practice a lot of peer pressure and put pressure on employees in order to bring them into line. You may have already experienced this pressure in the membership drive.

Presently, if you have a problem, you can come to management. Management will usually deal with the problem quickly and in a fair way. There is also a Human Resources Committee that you can go to for fair determination of your problem if you are not satisfied with how you are treated by management.

You have the right to join a Union but you also have the right to refuse to join. No one should pressure you into joining a Union if you do not want to do so. If you are pressured or harassed by a Union representative you should report the Union and the person pressuring you to the Ontario Labour Relations Board as follows:

**Ontario Labour Relations Board**  
400 University Avenue  
Toronto, Ontario  
M7A 1V4  
Toll Free Phone Number: 1-800-287-2965

If you have signed a Union card and want it back, you should also write to the above address and explain that you want it back.

Unions make promises of better working conditions and more money. It is easy to make those promises but you have to consider whether the promises are realistic. We have just emerged from a recession in the hospitality industry that has hurt many businesses and employees. Our employees have fared well in comparison to others in the hospitality industry.

Unions always make the promises of job security. Unions have never created one job. Job security can only come from us working as a team to provide excellent service to our guests. This

type of “good will” creates job security. Remember, Union organizers are salesmen making a sales pitch to get your union dues. Do not be fooled by their promises.

Compare your wages, benefits and working conditions with Union contracts in your area. These were achieved without a Union or you having to pay Union dues. If you are unionized, and the Union votes to go on strike, you will have to strike even though you do not wish to do so.

My reputation as the President of this company and the reputation of members of the management teams stands for fairness. We hope to maintain this reputation. If we make a mistake or you do not feel that you have been treated fairly, you have an appeal to the Human Resources Committee.

Management does not participate in Union drives as these decisions should be made on an individual basis, freely and without interference by management. This is why we have not taken any active stand in the past on these matters. You should know however that it is wrong for a Union organizer or any member of staff to **harass you, coerce you, or to put undue pressure on you** to join a Union. That type of conduct is wrong and you are within your rights to resist it and demand to be left alone if the conduct persists.

23. Following a meeting with the sales office staff in which the Union was discussed by Mr. Zappitelli, on June 1, 1995, a number of posters were posted by him on bulletin boards and glass enclosed cabinets throughout the staff areas of the hotel. Although Mr. Zappitelli was responsible for the content of the posters, their preparation was delegated by him to an office staff employee who falls within the proposed bargaining unit. Soon after being posted, the first set of posters were removed. When Mr. Zappitelli discovered that they had been removed, he had prepared another set of posters and marked them “NOT TO BE REMOVED! Please be considerate to your fellow staff members.” The new posters were posted on June 2, 1995. The posters are described as follows:

1. A poster stating: “Where would you like management to spend their time? Taking care of guests and promoting the hotel thus creating more hours for you? (a box containing a checkmark is beside this question) or Responding to union campaigns? (an empty box is beside this question) **YOU HAVE THE RIGHT TO CHOOSE!** Do you want the vocal minority to spend your money?”
2. An cartoon illustration depicting a man being grabbed around the neck by hands coming out of a pop machine with a caption that states “**AT OTHER UNION HOTELS:** You have to pay for your soft drinks...All proceeds to the Union.”
3. A poster with the heading “**DEDUCTIONS ALERT!!!**” which advises that summer staff at the unionized Brock and Foxhead Hotel pay \$70 per season for parking, \$11.25 each paycheque for union dues (including back dues owed during layoff and illness deducted from their first paycheques upon return to work), \$2.50 per day for meal deductions plus all taxes including income, P.S.T and G.S.T., and pay for all pop and coffee in the staff lunchroom.
4. A poster that states that the union did not start and does not help maintain the employees’ social committee and reminds employees that management encourages and co-sponsors the social committee.
5. A poster that expresses that Employment Standards can do anything for you that a union can do and advises that Employment Standards is unbiased, is free and that employees should use its services if unable to resolve problems through the Human Resources Committee. Employees are reminded not to confuse Employment Standards with “labour relations” which only deals with unions and are told “for example, if you have a complaint or wish to withdraw a signed card, contact labour relations.”
6. A poster that states “the union has never created a job in private industry, except for



their own. The union cannot change policies set by management. The union cannot get you an unearned raise. The Company can only pay what it can afford".

7. A poster that states "Starting October, 1995, when we renew our benefit package with our supplier, we will ask that the minimum requirements be reduced to 24 hours per week from 30 hours. This issue is being considered because of the on-going concerns of your Human Resources Committee."
8. A poster that contains an illustration of the proposed second tower addition with the caption "Who will build the tower addition? The union OR ROMZAP?"

24. Two of the above-noted posters were defaced and left posted until June 26, 1995. The "pop machine" poster, printed on bright orange paper, was posted on a blank white wall, in plain view, directly above the coffee/pop machine in the staff smoking lunchroom. After being posted, someone handwrote the words "SUCKS THE BIG ONE" underneath the word "union". The other poster that was defaced, was the one that contained the illustration of the Hotel's second tower. It too was printed on bright orange paper, posted in plain view on a stark white wall in between the two service staff elevators, just above the elevator button. On this poster, the word "union" had been crossed out and the word "SUCKS" was written beside it in red pen. All employees who testified on behalf of the Union and the non-managerial employees who testified on behalf of the Employer stated that they had seen the defaced posters. All managerial staff who testified, except Rose McIntyre, a supervisor in the housekeeping department, stated that they had not seen the posters in their defaced form but gave the impression that they would have taken steps to remove such posters had they been noticed. The managerial employees also acknowledged that they were aware of the Sheraton's policy prohibiting defacing or marking of company property. Ms. McIntyre, however, gave evidence that she saw the defaced posters but did not take any action because of the words "PLEASE DO NOT REMOVE...".

25. Mr. Zappitelli also posted provisions of a hotel collective agreement which set out rules with respect to union dues and deductions. This posting was done because Mr. Zappitelli wanted to provide an example of how union dues and fees are collected. It was acknowledged by Mr. Zappitelli that he is aware that the payment and collection of union dues and fees varies depending on the terms of a collective agreement.

#### (iv) June 1, 1995 - Sales Office Staff Meeting

26. On June 1, 1995 a meeting was held by Mr. Zappitelli, in his office, with six sales office staff employees; four of whom are non-managerial, and therefore would fall within the scope of the proposed bargaining unit. This meeting was held as a result of a suggestion by Pat Grayley, Director of Sales, to Mr. Zappitelli. Ms. Grayley made this request because one of her staff had asked her about the inclusion of office/sales employees in a potential bargaining unit and she believed that it might be useful to hold an information session about the Union. Ms. Grayley had also advised the employee to contact other hotels in Hamilton, Ontario, in order to inquire about inclusion of sales staff in collective bargaining. This meeting was called on a last minute basis and employees were not told in advance about its subject-matter, nor were they given the option to leave the meeting which lasted approximately 30 minutes.

27. During the meeting, Mr. Zappitelli showed a chart comparing wages of sales office staff at another local unionized hotel to the Sheraton's wages in order to explain that wages at the other hotel are less than the Sheraton's once deductions are made for union dues, parking, beverages and meals. To assist in his presentation, Mr. Zappitelli displayed and read aloud each of the posters referred to above in paragraph 23. In his testimony, Mr. Zappitelli took the position that the reference to summer staff in the "Deductions Alert" poster was made in error. He also expressed

that a union was not necessary at the present time and stated that employees should wait to become unionized until the casino and second tower addition are built so that they would have "the pick of any union". In addition, he told the employees that a chambermaid at the Sheraton had requested her union card back and that she had received forms from the Board that were so complicated that she would require a Philadelphia lawyer to decipher them. Through Mr. Zappitelli's cross-examination, however, it became clear that he knew that the chambermaid, in question, had received her card back directly from the Union.

28. Sue Doherty, an employee who attended the meeting, and who knew about Mr. Zappitelli's past employment experience as a union steward, asked Mr. Zappitelli a number of questions including why he had changed his opinion about unions. In response to that question, Mr. Zappitelli told the group about his dissatisfying experience in representing workers as a union steward and explained that it caused him to leave his job and to change his views on union representation. Further, based on the testimony of Ms. Grayley and Ms. Doherty, I find that Mr. Zappitelli stated that "good workers do not need a union and only the ones who do are those that break the rules". In this regard, Mr. Zappitelli remarked that good workers never need grievance and arbitration since they do not get into trouble.

29. During cross-examination, Mr. Zappitelli stated that he had no reason to doubt Ms. Doherty's testimony regarding her understanding of his statements pertaining to the continuation of employee privileges of free meals, beverages and parking. In this regard, Ms. Doherty testified that Mr. Zappitelli, in response to her question, stated that he could not guarantee that such privileges would continue, in the event of certification. Further, although he did not recall stating the following, Mr. Zappitelli did not doubt Ms. Doherty's recollection that he stated that if costs went up, he would have to make cuts and that such measures would be "out of his hands". I also find that Mr. Zappitelli did not specifically state, as asserted by Ms. Doherty, that if "he was backed into a corner he would come out kicking". However, on the evidence before me, it appears that Mr. Zappitelli rolled up his shirt sleeves and told the group that he was going to set aside running of the Hotel until all staff were informed.

**(v) June 2, 1995 Housekeeping Meeting**

30. On June 2, 1995, Mr. Zappitelli held a second meeting concerning the union with all housekeeping staff. The meeting began at 8:00 a.m. and lasted approximately 45 minutes. It was an unusual meeting because it was run by Mr. Zappitelli, it occurred 45 minutes earlier than the usual meeting time of the chambermaid daily meeting and because it included all housekeeping staff. Employees were not advised about the subject-matter, nor were they advised that they could leave the meeting at their option. At the beginning of the meeting, Mr. Zappitelli told employees that the Union organizing campaign was emotional for him. Essentially what occurred was an expanded version of the meeting Mr. Zappitelli held with the sales office staff on June 1, 1995.

31. During the meeting, Mr. Zappitelli addressed the group by displaying, using an overhead projector, and reading aloud, the posters referred to above in paragraph 23. He also showed a wage comparison chart which outlined wage rates for housekeeping positions at local non-union and unionized hotels. The wage rate for the laundry staff position at the unionized hotel was left blank. Mr. Zappitelli advised that the position does not exist at the comparator union-hotel due to contracting out of laundry services. Mr. Zappitelli used the chart to assist in his explanation that although the wage rates at the unionized hotel appears higher than at the Sheraton, the rates are, in fact lower, after deducting the cost of union dues, parking, meals and beverages.

32. I am further satisfied, giving particular weight to the testimony of Ms. McIntyre and Mr. Doucet (a non-managerial employee called on behalf of the Sheraton), that Mr. Zappitelli



commented to employees that the hotel rates must remain competitive, and that if he is required to pay increased wages, increased room rates might result causing a loss in business. In addition, I am convinced, again giving particular weight to the testimony of Ms. McIntyre and Mr. Doucet, that Mr. Zappitelli expressed to employees that if the union came to the hotel, the benefits of free parking, meals and beverages would be out of his hands and gave the impression that such benefits would be charged in a similar fashion to the local unionized hotel.

33. During the meeting, a discussion ensued surrounding the value of unions in the workplace. I find that the topic was introduced by a non-managerial employee, Bill LeFave, who asked employees if they had previously belonged to a union and then proceeded to relate a story about his family's poor experience with a union. Mr. LeFave's story was followed by comments made by Mr. Zappitelli who recounted his negative experience as a union steward, essentially a repeat of the story he told to the office staff on June 1, 1995. Mr. Zappitelli also expressed his view that the only people who need unions are those who break the rules. In debating with Mr. Wilson about the tax deductibility of union dues, Mr. Zappitelli attempted to correct advice that dues were 100% tax deductible and remarked that people would be better off donating to charity.

34. Mr. Zappitelli also told employees that, if the casino is built in Niagara Falls, employees would have their pick of any union and he advised them that he would prefer that employees wait for unionization until the casino scenario occurs. According to Mr. Zappitelli, although employees have the "right to choose" a union, he wanted them to research the Union in more detail before choosing. At the conclusion of the meeting, I have determined that Mr. Zappitelli stated that he would have meetings with them every day or week, if necessary, to keep them informed.

(vi) Other Staff Meetings

35. In addition to the two housekeeping meetings and the sales office meeting reviewed above, Mr. Zappitelli discussed the Union organizing campaign with other departments, but not to the same extent. The topic of the Union arose within the context of regular meetings of the Food and Beverage department on May 30, 1995, the Front Office department on May 31, 1995, the Banquet department during the second week of May, 1995, and in a meeting of the Human Resources Committee on June 14, 1995. The minutes of the May 30, 1995 Food and Beverage department meeting reflect that Mr. Zappitelli told staff that he could not talk about the Union or discourage anyone from signing up. He also advised that no one could force them to sign a card. There were no minutes prepared for either the Front Office meeting on May 31, 1995 nor the Banquet department meeting above-noted. The minutes of the Human Resources Committee record that Mr. Zappitelli was asked by an employee about the "B.E.C.A.U.S.E" memo (referred to below), and that he explained that the memo's origin was unknown and that its posting was unauthorized. A question about a petition was also raised during this meeting, but Mr. Zappitelli stated that he could not discuss a petition with anyone. He further told employees that they could call the "OLRB" if concerned about their rights.

36. When Mr. Zappitelli first became aware of the Union organizing campaign on April 5, 1995, he advised supervisors in a Human Resources meeting, to inform employees of their rights during a union organizing drive. Mr. Zappitelli also held a meeting with all managers on May 25, 1995. The minutes of the meeting reflect that Mr. Zappitelli advised managers that no intimidation is permitted to prevent employees from joining the Union, nor is the Union permitted to intimidate employees. Mr. Zappitelli further advised that department heads were permitted to advise employees to investigate and research before making a decision to sign a union card. He also told the managers that they should talk to employees to make sure they understood both the advantages and disadvantages of the Union.



(vii) The “B.E.C.A.U.S.E” Memo

37. On June 10, 1995, the following memo was discovered posted in the staff change rooms, kitchen and dining room, and outside the housekeeping office:

“June 9, 1995

From: The B.E.C.A.U.S.E. Group (Be Concerned About Unionizing of Sheraton Employees)

Topic: Work being contracted out

A strong possibility exists that any & all positions currently held by any & all employees of Housekeeping, Laundry, Security and Maintenance departments could be eliminated and these employees be permanently laid off at any time after the union sets up shop in this hotel.

The work formerly done by these employees will be contracted out to private security firms, commercial janitorial and laundry service providers and industrial maintenance workers.

If it could possibly happen to employees in these departments then ask yourself - Could my job be next ???

Do you know if the union asking to represent you has included safeguards against this type of action in the contract they want you to agree to work under ???

It is in your best interest to find out about this. Ask the union recruiters about this and see what they have to say or don't want to say about this matter.”

No one was identified as responsible for the memo. The memo was in plain view to staff from 7:00 a.m. until 2:30 p.m. that day. Ms. Fortuna, a housekeeping supervisor, noticed the memo upon her arrival at work at 7:00 a.m. on June 10, 1995 and discussed it with staff that morning and at lunch. According to Ms. Fortuna, staff asked her whether laundry, maintenance and security services would be contracted out. She advised that the idea was illogical because the Hotel had in-house facilities and services. One of the Union's witnesses testified that she believed the contents of the memo were untrue. Despite knowing that the message contained a threat to job security, Ms. Fortuna did not report the memo to Mr. Zappitelli or to other senior management claiming that she thought it was posted for everyone to read and that she was preoccupied with her work.

38. When Mr. Zappitelli arrived at work at noon on June 10, 1995, he was advised about the “B.E.C.A.U.S.E” memo by his son, Albert Zappitelli, the Sheraton's Manager. Mr. Zappitelli did not remove the memo immediately because he claimed he was confused by the language in its last paragraph, and therefore, he wanted to investigate the matter. Because of the wording of the last paragraph, Mr. Zappitelli was unsure if the Union had prepared the memo. He ordered Security, at 2:30 p.m., to remove the memo from all locations where it was posted. Security, in fact, failed to remove all of the memos, and as a result, the memo located outside the housekeeping office was not torn down until June 11, 1995.

viii Petition

(a) Allegations of Employer Interference

39. During the first week of June, 1995, Karen Nicol, an employee in the Accounting department, was approached by the Sheraton's Controller, Fred Alam, about a petition. Much of Ms. Nicol's evidence about Mr. Alam's comments and his alleged involvement in the petition was disputed. Having regard to the evidence tendered, I prefer the version of events stated by Ms. Nicol because it is more probable in the circumstances having regard to the usual factors in assess-

ing credibility including the demeanour of Mr. Alam during his testimony. Accordingly, I find that the following events represent what occurred. Mr. Alam called Ms. Nicol into his office during the first week of June, 1995 and asked her how she felt about the Union. He told her that he had just been approached by an employee, Mr. Towne, who had started a petition against the Union and was asked to provide assistance. Mr. Alam explained to Ms. Nicol that he told Mr. Towne he could not assist in the petition; however, he proceeded to tell Ms. Nicol that if she was interested she should talk to Mr. Towne. He also told her that if she wanted to know more about the petition, she could meet with him, Mr. Towne and Mr. Zappitelli. Ms. Nicol advised Mr. Alam that she did not have sufficient information about both sides of the Union issue to make a judgement, and that, unless she had more information, she would not make a commitment either way. She told Mr. Alam to call her regarding a meeting with him and Mr. Zappitelli about the petition. Shortly after their discussion, Mr. Alam was questioned by Ms. Nicol about the petition and was told by him to forget about their discussion.

**b) Allegation of Witness Intimidation**

40. Related to Ms. Nicol's testimony regarding the petition, is the section 82 allegation involving a conversation between her and Mr. Zappitelli on June 30, 1995. The evidence about this conversation was not in great dispute. On June 30, 1995, three days after it was disclosed to the Sheraton that Ms. Nicol would be testifying about the petition, Mr. Zappitelli called her into his office, without stating a reason, and told her that she did not have to talk to him if she so chose. It should be noted that when particulars were ordered on the first day of the hearing, the Union was concerned about divulging names of employees for fear of reprisals by the Sheraton. Although I did not make an order, as requested by the Union, to bar either party from speaking to potential witnesses, I did caution the parties regarding the reprisal provisions in the Act and stated that it was in everyone's interest not to expand the numerous matters already at issue in the case.

41. The conversation between Mr. Zappitelli and Ms. Nicol lasted no more than five minutes. He advised her that he knew she would be testifying at the hearing and that he had no control over the fact that she had been subpoenaed. He then reminded Ms. Nicol, who agreed, that the information that she deals with in her position in the accounting department is confidential and that she must not disclose such information. He told her that she must not "say anything to anyone because people are recording her statements". Mr. Zappitelli also told her that she must have "leaked something which got into the wrong hands", but he explained that he could not reveal what was leaked due to the on-going proceedings at the Board. At the conclusion of their discussion, Mr. Zappitelli advised Ms. Nicol that his counsel would be at the Sheraton that afternoon, and that it was her prerogative if she wanted to talk to him. Ms. Nicol did meet with counsel, but did not discuss the conversation she had with Mr. Zappitelli. Ms. Nicol's uncontradicted testimony was that following her conversation with Mr. Zappitelli, she felt nervous and worried, as if she'd made an error in disclosing confidential information. However, she concluded that the only information Mr. Zappitelli could have been referring to was the petition.

**(c) Petition Circulation**

42. Mr. Lair, a maintenance employee, testified about a petition he circulated on or about June 16, 1995. The petition was not before me for the purpose of determining the number of membership cards filed in support of the application as it was untimely. However, Mr. Lair was permitted to testify generally about the petition and his efforts in collecting signatures. Essentially, the petition asked employees to support the demand for the right to vote against any union in a certification process. Commencing June 16, 1995, Mr. Lair and two other employees collected signatures on the petition at work during lunch and breaks. Mr. Lair, also came into the hotel on his days off



and approached employees for signatures in support of the petition during their working hours and during their breaks. 183 employees signed the petition. Mr. Lair denied that there was any managerial involvement in the petition and indicated that he was unaware of a discussion regarding the petition between Mr. Alam and one of the other employees who assisted with the petition.

(ix) **Bill Wilson Incidents**

43. On May 20, 1995, Mr. Wilson received a written warning and disciplinary transfer to a position in the laundry staff area from his position as a houseman. The warning letter prohibited Mr. Wilson from entering the public areas and guests floors of the hotel and warned him that further contraventions of the instructions would lead to further disciplinary action up to and including dismissal. The Sheraton maintains that its actions were not motivated by anti-union considerations, but resulted solely because of Mr. Wilson's poor work record and because of a complaint filed by Ms. Piper about Mr. Wilson on May 19, 1995. The following is a summary of the background and facts which surround the discipline of Mr. Wilson.

44. Mr. Wilson was hired in the position of houseman in April, 1994. As a houseman, Mr. Wilson's duties generally included supplying linens and toiletries and transporting laundry to the chambermaids assigned to various hotel floors. As a general rule, Mr. Wilson was assigned to service the chambermaids on floors 3 to 11. His common-law partner, Kathy Mercer, a chambermaid at the hotel, was generally assigned duties for the 14th floor. Mr. Wilson's employment record reveals that he had been reprimanded by his supervisors, regarding his uncooperative attitude toward other employees in September, 1994 and was ordered to stay off the 14th floor when he returned to work following a lay-off in January, 1995. Mr. Wilson did receive an employee disciplinary report, which he signed noting his disagreement in part, for the September, 1994 reprimand but did not receive written confirmation of the January 1995 order. On April 3, 1995, Mr. Wilson received another written warning pertaining to complaints from other employees about his attitude and to concerns about overstocking linens.

45. In addition to the complaint filed by Ms. Piper, the written warning of May 20, 1995 refers, in part, to Mr. Wilson being observed on the 14th floor, in contravention of the January, 1995 instruction, on May 16 and May 20, 1995. The written warning also refers to an incident that occurred on May 16, 1995 in which Mr. Wilson apparently refused to service chambermaids when requested claiming that he was too busy and behind in his work. However, neither of these incidents were brought to Mr. Wilson's attention until he received the written warning letter on May 20, 1995, nor was Mr. Wilson asked his version of the events. I am satisfied, based on the evidence, that Mr. Wilson was seen on the 14th floor, on May 16, 1995 and did refuse to service chambermaids, as requested, on May 16, 1995.

46. As further background, it should be noted that Mr. Wilson has a lengthy criminal record, which was brought to the attention of Mr. Zappitelli through an anonymous phone call in January, 1995. Although shaken by knowledge of a possible criminal record, Mr. Zappitelli did not take any specific action against Mr. Wilson, except to seek legal advice and to notify his immediate supervisors generally about it. It was evident from Mr. Zappitelli's cross-examination that he misread Mr. Wilson's employment history as having gaps of two to three years rather than the few months gap that is noted on Mr. Wilson's employment application. During his testimony, Mr. Wilson admitted to the existence of a record, including a conviction of assault against Ms. Mercer, but both he and Ms. Mercer deny that an assault occurred. There was also evidence before me regarding other personal difficulties between Ms. Mercer and Mr. Wilson, which were generally denied by them, but which certainly formed the basis of Ms. Piper's dislike and distrust of Mr. Wilson.

47. With respect to the incident involving Ms. Piper, it is my finding that the altercations



which occurred on May 19, 1995 were sparked because of a telephone call by Mr. Wilson to Ms. Piper's home on May 18, 1995. It should be noted that there were significant differences between Mr. Wilson and Ms. Piper about all of the incidents surrounding the May 19th altercations. Based on my assessment of all of the testimony provided, the following is my determination of the facts which appear to be most probable in the circumstances.

48. During the telephone call on May 18, 1995, Mr. Wilson spoke to Ms. Piper's partner, Eric Kay, and asked him why Ms. Piper requested her union card back. Mr. Kay told Mr. Wilson that he was not aware about the Union drive nor of Ms. Piper's involvement and advised Mr. Wilson that he did not want to get involved. Later that day, Mr. Wilson bumped into Mr. Kay at a local tavern and again asked about Ms. Piper's request to rescind her card. He was essentially given the same response by Mr. Kay. Mr. Kay related his conversations with Mr. Wilson to Ms. Piper who became extremely angry that Mr. Wilson even knew about her request and had approached Mr. Kay about it. As a response, when Ms. Piper saw Mr. Wilson the next morning at work, she confronted him, in the presence of a supervisor, and, uttering profanities, told him that he had no right to call her home and question Mr. Kay.

49. Following this altercation, Ms. Piper spoke to her supervisor Ms. Fortuna, who took her to see Mr. Zappitelli. Ms. Piper told Mr. Zappitelli that Mr. Wilson had called her at home regarding her request to return her union card. She advised Mr. Zappitelli that she had changed her mind about the Union after the May 12, 1995 housekeeping meeting. She did not divulge that she yelled and swore at Mr. Wilson that morning.

50. At lunch that day, Ms. Piper was approached by Ms. Mercer who angrily questioned Ms. Piper why she had spoken to Mr. Zappitelli and stated that "people's jobs were on the line". Immediately after this incident, Mr. Wilson came into the lunchroom and yelled at Ms. Piper about her discussion with Mr. Zappitelli and warned her to keep her mouth shut about the union organizing campaign. In response, Ms. Piper told Mr. Wilson that Mr. Zappitelli knew everything about the campaign even though she had not disclosed any other information to Mr. Zappitelli other than her change of mind on the Union.

51. Tom Balkwell, another employee, testified about the confrontations that took place in the lunchroom on May 19, 1995. He could not recall the details of what was stated, but explained that he was shocked by the incidents. He stated that Ms. Piper appeared "shook-up and embarrassed". Liz Toth, an employee who was sitting beside Ms. Piper during these incidents, was not called to testify.

52. After this altercation with Mr. Wilson, Ms. Piper remained in the lunchroom, finished her cigarette and then reported the incident to Ms. Fortuna and to Mr. Zappitelli. During her conversation with them, she indicated that she had been humiliated by Mr. Wilson and Ms. Mercer in front of other staff members. Ms. Piper gave the impression that she felt threatened by Mr. Wilson, particularly given her knowledge of his criminal background. She also advised Mr. Zappitelli that she had supplied 45 employee names to the Union to assist in the campaign.

53. The police were called by Mr. Zappitelli and Ms. Piper provided a report of the situation but no charges were filed. Sometime later that day, Mr. Zappitelli approached Mr. Wilson in a hallway and asked him if he swore at Ms. Piper that day. Mr. Wilson responded that he did not swear, but rather, it was Ms. Piper who engaged in swearing. Mr. Zappitelli then told Mr. Wilson to stay away from Ms. Piper. Mr. Wilson called Ms. Piper on the evening of May 19, 1995, but did not speak to her. When Mr. Wilson called, he was spoken to by Mr. Kay who yelled at Mr. Wilson not to contact Ms. Piper again. On May 20, 1995, Mr. Wilson was re-assigned to a laundry position pending investigation. He was told to stay away from Ms. Piper. He was also warned that any con-

traventions would result in further discipline up to and including dismissal. I do not find that Mr. Zappitelli told Mr. Wilson, as alleged, that he would make his life miserable and find a reason to fire him if he continued to organize the hotel.

54. Following the disciplinary notice of May 20, 1995, Mr. Wilson attempted to contact Ms. Piper, at home, on May 25, 1995. The conversation that took place essentially involved Mr. Kay, yelling profanities and making threatening remarks at Mr. Wilson regarding any further interaction with Ms. Piper. Ms. Piper testified that she filed a complaint with the police about Mr. Wilson and also informed Mr. Zappitelli about Mr. Wilson's phone call of May 25, 1995. The Sheraton did not take any further action against Mr. Wilson relating to the May 25, 1995 phone call.

55. Other incidents which form the basis for the Union's allegations of harassment of Mr. Wilson include the following. On May 16, 1995, Mr. Zappitelli approached Mr. Wilson on the 17th floor and asked him what he was doing on that floor since normally Mr. Wilson was assigned to the lower floors. Mr. Wilson replied that he had been given an assignment by his supervisor for that floor but Mr. Zappitelli did not believe him. Mr. Zappitelli briskly picked up the house phone and called Mr. Wilson's supervisor only to receive confirmation that Mr. Wilson had been assigned duties on that floor. I am satisfied that Mr. Zappitelli used an angry tone toward Mr. Wilson during this incident. Another allegation of harassment involved an incident in which one of Mr. Wilson's supervisor's, Ms. Fortuna, yelled at him during one shift in early June, 1995 for folding laundry while sitting on a chair rather than standing. Ms. Fortuna claimed that folding laundry from a sitting position is an inefficient and unacceptable method and that she would not tolerate any employees performing the task from a sitting position. Based on the evidence, I am satisfied that other employees had, in the past, folded laundry in a sitting position without reprimand.

56. The Union also alleged that another employee in the laundry department, Todd Overall, was questioned by Ms. McIntyre, a housekeeping supervisor, regarding his decision about joining the union and about Mr. Wilson's union involvement. The evidence of Ms. McIntyre and Mr. Overall was in dispute. Based on the uncontradicted testimony of Mr. Overall, as well as the usual factors in determining credibility, I am satisfied that his version of events represent what occurred. Mr. Overall stated that he had told Ms. McIntyre previously, in relation to a prior Union drive, that he was not in favour of unions. In this Union's organizing campaign Ms. McIntyre told Mr. Overall that Mr. Zappitelli wanted to know who had signed union cards and asked him to keep his "eyes and ears open". On three separate occasions Ms. McIntyre asked Mr. Overall how Mr. Wilson was doing in the laundry department. During one of these approaches Ms. McIntyre mentioned to Mr. Overall that "Bill Wilson is trying to find things out on us." Mr. Overall replied that "you are trying to get things on him", to which Ms. McIntyre replied "all's fair in love and war".

### The Law

57. With these facts in mind, I turn now to the law. An employer's right to freely express its views during a union organizing campaign is provided for in section 65 of the Act:

65. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

58. The Board's jurisprudence on the meaning of "freedom of expression" is succinctly set out in the case of *Viceroy Construction Company Limited* [1977] OLRB Rep. Sept. 562 at page 563:



9. Insofar as it relates to freedom of expression that section seeks to balance two competing interests. On the one hand it protects the right of an employer to express his opinion in opposition to a trade union. On the other hand it recognizes the sensitive nature of employment relationships and protects employees from utterances of an employer that would have a coercive impact on their decision whether or not to be represented by a union.

10. The legislative scheme anticipates that having been exposed to the views of both employer and union the employees should decide for themselves. To insure the independence of their decision section 61 of the Act prohibits intimidation or coercion of employees by a trade union and section 56 imposes a similar restraint upon an employer. But while section 61 prohibits "intimidation and coercion" section 56 is extended to include a prohibition of "coercion, intimidation, threats, promises or undue influence". Implicit in the broader reference to threats, promises and undue influence, is the recognition that employees may be especially vulnerable to the influence of their employer.

11. The Act recognizes that an employer is in the more immediate position to affect an individual's employment relationship, if only by virtue of its freedom to advance, preserve, impede or terminate an individual's employment. Therefore, by the terms of the Act, that very freedom is restricted. In order to protect and promote the collective bargaining process the Legislature has provided that no employer is free to affect a person's job security or conditions of employment when the employer's action is prompted by an anti-union motive, (e.g. section 58 of the Act). For the same reason, by virtue of the Act, an employer's freedom of expression regarding possible union representation of his employees is not absolute. While he is of course free to express his view of representation by a trade union he may not use that freedom of expression to make overt or subtle threats or promises motivated by anti-union sentiment which go to the sensitive area of changes in conditions of employment or job security.

59. The determination of whether conduct falls within the permissible boundaries of freedom of expression requires a line drawing exercise and balancing of competing interests based on the particular facts of each case. In *Lorain Products (Canada) Ltd.*, [1977] OLRB Rep. Nov. 734, at page 735 the Board commented as follows:

...

5. ... The line which separates freedom of expression from undue influence or the other prohibitions found in Section 56 of the Act is a thin one which must be drawn having regard to the facts of the particular case. There are, however, certain broad indicia which have been well set out in the *Dylex* case (*supra*) at paragraph 19:

"In seeking to establish where the line lies the Board starts with the presumption that employees recognize that employers generally are not in favour of having to deal with employees through a trade union, and that therefore it ought not to surprise them when their employer indicates that he would prefer it if they voted against a trade union. Following from this the Board takes the view that an invitation to employees from their employer to vote against a trade union, in the absence of any surrounding facts or circumstances which would cause the employees to place undue emphasis on such statements, does not constitute undue influence within the meaning of section 56. (See: *Playtex Limited*, [1972] OLRB Rep. Dec. 1027.) On the other hand, however, the Board is also cognizant that an employee may be peculiarly vulnerable to employer influences. This point is clearly brought out in the decision of the Canada Labour Relations Board in the *Taggart Service Limited* case [(1964) CLLR Transfer Binder '64-'66, ¶16,015 at page 13,055] the following excerpt from which was cited with approval by this Board in the leading case of *Bell & Howell Ltd.*, [1968] OLRB Rep. Oct. 695 at p. 706:

'An employer may express his views and give facts in appropriate manner and circumstances on the issues involved in representation proceedings in so far as these directly affect him and has the right to make appropriate reply to propaganda directed against him in relation thereto. However he should bear in mind in so doing the force and weight which such expressions of views may have upon the minds of his employees and which derive from the nature and extent of his authority as employer over his employees with respect to their wages, working conditions and continuity of employment. He should take care that such expressions of views do not consti-



tute and may not be reasonably construed by his employees to be an attempt by means of intimidation, threats, or other means of coercion to interfere with their freedoms to join a trade union of their choice or to otherwise select a bargaining agent of their own choice.”

60. The Board also examines the cumulative impact of statements and conduct to determine if they are designed to influence employees in contravention of the Act. Thus one of the tests for granting certification without a vote pursuant to section 9.2 of the Act is satisfied “where the cumulative effect of a range of unlawful employer activities, none of which taken separately call the section into play, has the effect of undermining the confidence in the rule of law which a reasonable employee is presumed to have and which gives a reasonable employee the confidence to make a free choice” (*Canac Kitchens Limited*, [1994] OLRB Rep. August 972, at page 985). By way of example, in the *Dylex* decision (cited above) at page 367, the Board did not accept the argument that a series of letters by an employer addressed to employees during the period prior to a representation vote merely contained factual information. In that case, the employer issued three letters which clearly indicated that it was opposed to having its employees represented by the applicant union. In addition to urging employees to vote “no” in the representation vote, the letters contained a series of questions and answers relating to job security, a possible future strike and statements that the Union cannot guarantee various terms and conditions of employment. The Board concluded, at page 367, that the cumulative impact of the statements contained in the letters exceeded the realm of free speech when it stated that:

20. Counsel for the respondent took the position that the material set out in the three letters to employees was factual and that it did not constitute a form of undue influence. It may well be that each of the statements contained in the letters if taken by itself is factual. However, we nevertheless are of the view that the letters when taken together in their entirety go well beyond a mere expression of employer views but instead deliberately seek to capitalize on normal employee desires for job security and fears of loss of employment.

61. The Board also reviews the circumstances and timing of statements, such as increases to wages or benefits, to determine if such statements are designed to influence employees. See for instance, *Kuhlman Plastics of Canada Ltd.*, [1988] OLRB Rep. Dec. 1284, at page 1288 and *Canac Kitchens Limited*, (cited above), where the Board concluded that the manner and timing of conferring improved benefits arose in response to the Union organizing campaign, and therefore, constituted influence over employees in contravention of the Act.

62. Once a finding of a contravention of the Act is made, the Board must then assess, under section 9.2 whether the violation has resulted in a situation where the true wishes of employees are not likely to be ascertained. This analysis involves an objective assessment which considers the impact of the employer’s misconduct on a “typical employee” (see: *Zest Furniture Industries Limited*, [1987] OLRB Rep. February 299, at page 304.) Furthermore, the Board has also considered the impact of an employer’s statements on an entire workforce where such statements were made to only a portion of employees. In this regard, the Board examines the facts to determine whether statements made, in contravention of the Act, to a smaller group of employees, “poison” the employees as a whole, given the organization of the workplace and how communication travels within it. In *Domus Industries Ltd.*, [1994] OLRB Rep. December 1630, at page 1640, the Board applied the provisions of section 9.2 to a group of employees located at different job sites where it concluded that the true wishes of a group of employees at one job site could not be ascertained because of the employer’s conduct and stated as follows, at page 1640:

Once the well is poisoned in this manner it becomes impossible to ascertain the true wishes of the “employees” as a group, and the legislative remedy in section 9.2 may be applied by the Board. To conclude otherwise would be to reward an employer for its commission of unfair labour practices.

### Decision

63. Based on my review of the evidence and on the submissions, I have concluded that a number of the statements made at meetings by Mr. Zappitelli, statements made through the poster campaign, the failure to promptly remove anti-union graffiti and the B.E.C.A.U.S.E. memorandum establish that the Sheraton breached section 65 of the Act. I have also determined that the Sheraton, through Mr. Alam and Mr. Zappitelli must have been involved in the petition and that such involvement constitutes improper employer interference. I have found that Mr. Zappitelli intimidated Ms. Nicol with respect to her testimony in contravention of section 82 of the Act. I have further found that the discipline of Mr. Wilson on May 20, 1995 was motivated, at least in part, by anti-union animus, and therefore, the Sheraton's conduct in that regard resulted in a violation of section 67 the Act. Many of the statements made by Mr. Zappitelli through discussion, memos and posters, do not breach the Act; for example, I have concluded that posting of collective agreement provisions on dues deductions does not offend the Act. However, many of the statements reviewed, do not fall within the acceptable framework of employer free speech, even when juxtaposed against statements notifying employees of their rights under the Act. The fact that Mr. Zappitelli inserted statements about employee rights does not neutralize the intention or impact of the messages conveyed in contravention of the Act. The cumulative effect points to the conclusion that the Sheraton deprived the employees "of the ability to choose freely in an atmosphere untainted by employer undue influence and interference, whether or not they wished to be represented by the applicant trade union" (*Robin Hood Multi-Foods Inc.*, [1981] OLRB Rep. July 972 at page 998). Below are my reasons in support of these findings.

64. A common theme that arose from all of the evidence was that employees, which include skeletal full-time year-round staff and numerous summer and seasonal staff are sensitive about the seasonal workload and are waiting in anticipation for the prospect of year-round employment that would occur with the proposed hotel "casino" expansion. It was also evident that employees, and Mr. Zappitelli, regard the current provision to staff of free beverages, meals and parking as an extremely valuable benefit unique to the local hotels in Niagara Falls. It also became clear, primarily through the evidence of Mr. Zappitelli, that despite the large size of the hotel and employee complement, the Sheraton is run from a "family" oriented approach with Mr. Zappitelli having close personal control over all aspects of the hotel's operation. It was evident that Mr. Zappitelli makes an effort to know employees on a first-name basis and to communicate information, where appropriate, to all employees equally.

65. Although Mr. Zappitelli tried to create the impression at the hearing that he was neutral about the Union and that he would be accepting of the Union if the employees voted in favour of it through a representation vote, the message that he conveyed to the employees was that he was in disfavour of dealing with them through a union, at least at the current time. As stated earlier in this decision, the caselaw has established that there is nothing improper for an employer, in the face of a union organizing drive, to express to employees that it does not want a union; in fact, that position is often what is expected as an employer's response to the prospect of unionization (see: *Lorain Products (Canada) Ltd.*, cited above). However, Mr. Zappitelli couched his views about unionization by interweaving implied threats to employee job security and economic well-being. Coupled with this message, he repeatedly reminded employees that it was not too late to change their minds about the union and gave instructions on how they could seek the return of their membership cards.

66. In the May 12, 1995 housekeeping meeting Mr. Zappitelli held a captive audience meeting supposedly for the purpose of providing information to employees about their rights and to, in part, respond to complaints about the union's organizing campaign. Based on my earlier findings



regarding this meeting, Mr. Zappitelli's underlying motivation for personally addressing this group must have been directed at conveying his dislike for the Union and for instilling some fear and doubt in the minds of employees regarding their decision about unionization. Although portions of the May 11, 1995 memo contain valid factual statements, other statements together with Mr. Zappitelli's additional remarks are inappropriate.

67. During the meeting, Mr. Zappitelli clearly advised employees that the casino had been actively promoted by him for their benefit in order to extend the Sheraton's season and to create full-time jobs. He also reminded employees that an addition to the Hotel was planned which will create more jobs. It should be noted that in his testimony, Mr. Zappitelli explained that the Hotel tower addition would not be built if the casino didn't come to fruition. That was not the message conveyed to employees during the meeting nor in the posting of the May 11, 1995 memo.

68. Mr. Zappitelli's comments must be considered in the context of his stated purpose of the meeting, which was to respond to complaints and advise employees of their rights about the union. In that context, Mr. Zappitelli's remarks cannot reasonably be aimed at his stated purposes, but rather are designed to raise doubt in employees minds about hotel expansion, and greater job security. Furthermore, the implied message of the negative impact of certification on expansion plans is reinforced by the subsequent posting of the "tower" poster which raises the question of whether a second tower will be built and asks employees who will build it; the union or the Sheraton. If not to instil fear about negative financial consequences in the event of certification, there appears to be no other purpose to Mr. Zappitelli telling employees that the Sheraton can only build the addition with bank financing. Similarly, Mr. Zappitelli focused on his precarious financial situation by making the gesture of his empty pant pockets and by comparing his dilapidated vehicle to the "new mustang" driven by the union representative. Although Mr. Zappitelli claimed that his remarks only stipulated facts, they must be considered in the manner in which they were presented. The implication of his remarks suggest that neither he or the Sheraton have additional funds to spare, and therefore, expansion plans and promises of year round employment could be negatively impacted in the event of unionization.

69. I have also concluded that the statements noted in the May 11, 1995 memo, taken together with his additional remarks about remaining competitive during the May 12, 1995 meeting are in breach of the Act. The comments about the hotel remaining competitive were made in conjunction with statements about the union no longer promising job guarantees. Mr. Zappitelli's comments that the hotel must remain competitive with rates and that the hotel can only pay out of profits, although presumably factual, are clearly playing on employees' sensitivities to continued job security. In isolation, these statements might not be of particular concern, but they occurred in a context and as part of a continuing dialogue of meetings, statements and posters. The logical conclusion to be drawn from Mr. Zappitelli's statements is that if the Sheraton is forced to increase room rates, as a result of the increased costs arising from unionization, it would not remain competitive and would lose business thereby affecting jobs. This threat was also implied during the June 2, 1995 Housekeeping meeting. These comments go far beyond responding to, for example, the alleged promises to employees that wages would increase to \$12 or \$13 per hour in the event that the Union is certified.

70. The threat to job security and employees economic well-being is also substantiated by the fact that Mr. Zappitelli told employees at the meeting that the more time he is required to spend dealing with the Union, the less time he will have to devote to increasing Hotel business. This warning is repeated in clearer terms in the poster which questions employees about how they would like management to spend their time that Mr. Zappitelli subsequently posted throughout the staff area of the Hotel and reviewed at the June 1, 1995 sales office meeting and June 2, 1995



housekeeping meeting. Even though Mr. Zappitelli insisted that employees have the right to choose union representation, his words were not neutral and placed the choice about union representation in the context of the possibility of less work and the reduced likelihood of extended year-round employment. It is evident that Mr. Zappitelli was using his position to affect the particular vulnerability of employees by linking the union to diminished business opportunities which could directly effect continued and future employment. Such conduct is precisely what is proscribed by the Act as illustrated in the Board's jurisprudence (see: *Viceroy Construction Co. Ltd., Lorain Products (Canada) Ltd.* (cited above), citing *Dylex Limited* [1977] OLRB Rep. June 357).

71. A strong comparison can be drawn between the conduct of Mr. Zappitelli with regard to the provision of information on the withdrawal of union cards and the conduct of the employer in *Dylex Limited* (cited above). In that case, the employer in conjunction with making numerous statements about job security, the inability of a union to guarantee employees anything and, the possibility of a strike, urged employees to vote "NO" in a representation vote and included an illustration of a ballot with an "X" marked beside the word "NO". The Board concluded, at page 368, that the employer's letters were deliberately calculated to play upon employee fears for job security. Added to that were anti-union visual displays in constant view of employees, as well as instructions explaining how to vote "NO". As a result, the Board found that these actions taken together constituted undue influence. In comparison, Mr. Zappitelli's statements instructing employees how to obtain their signed union cards back in the context of the May 12th meeting and the posted memoranda of May 19, 1995 and the "Employment Standards" poster, also constitute undue influence because such statements were coincident to comments threatening job security, disparaging the union and affecting economic status of employees. It must also be recalled that Mr. Zappitelli's reminder messages on how to seek the return of a union card remained in employees' view until early June, 1995 when additional anti-union visual displays were posted and when further meetings between Mr. Zappitelli and staff occurred during which he stated his clear preference that employees not join a union at the current time.

72. I also find that Mr. Zappitelli contravened the Act during both the June 1 and June 2, 1995 meetings with staff and based on the numerous posters displayed by him during the meetings and through their prominent postings in the staff areas of the Hotel. Both meetings were captive audience meetings in which Mr. Zappitelli took the opportunity through the poster presentations and his remarks to play on the fears and sensitivities of the employees with respect to unionization. I have also considered the effect that such comments would have on a "typical employee" when assessed in the context of negative remarks made by Mr. Zappitelli such as "only those employees who need a union are the ones who break the rules", "you would be better off giving your money to charity" and misinformation about a "poor chambermaid" who tried to get back her union membership card. The threatening nature of Mr. Zappitelli's remarks is further confirmed by his statement to employees, at the conclusion of the June 2, 1995 meeting that he would meet with them everyday, if necessary until they were informed.

73. Although Mr. Zappitelli did not specifically state that employees would be charged for parking or be required to pay for meals and beverages, the message existed implicitly. I have concluded that Mr. Zappitelli's responses to Ms. Doherty's questions gave a clear indication that it was likely that the continuation of these benefits was in doubt in the event of certification. Mr. Zappitelli admitted that he had no reason to doubt Ms. Doherty's testimony that if costs went up he would have to cut costs, and that such matters; benefits of free beverages, meals and parking would be "out of his hands". Mr. Zappitelli's sleeve rolling gesture also leads me to believe that he gave the impression, as described by Ms. Doherty, that, if he was backed into a corner by the union, he could be forced to take action such as the withdrawal of privileges currently enjoyed by the Sheraton staff.

74. A similar message was implied in the June 2, 1995 housekeeping meeting. Mr. Zappitelli's evidence in this regard was not convincing, particularly, since he refused to concede that the cartoon illustration in the "pop machine" poster depicted a man being choked. In contrast Ms. McIntyre and Mr. Doucet admitted that the message being conveyed was that employees would have to pay for beverages, meals and parking if the union was certified. It is also evident that Mr. Zappitelli deliberately misled employees about how pop-machine proceeds were allocated at the comparator union hotel, and thus, employees were left with the wrong impression that proceeds were taken by the union instead of the allocation to an employee training fund pursuant to the terms of the applicable collective agreement. The "Deductions Alert" poster, particularly when considered as part of the package, also reinforces the link that deductions of such employee benefits could occur upon certification. I further find that this poster, despite a denial by Mr. Zappitelli, specifically targeted the Sheraton's seasonal summer staff. The explanation given that the reference to summer staff (which was highlighted in black bold lettering) was a typographical error does not seem plausible, particularly in the circumstances where it only seems logical that Mr. Zappitelli would want the message conveyed to both seasonal and full-time employees.

75. With respect to the announcement of the expansion of benefit eligibility, I am not convinced that it was coincidental to the organizing campaign. Although Mr. Zappitelli and Ms. McIntyre testified that the benefit eligibility expansion was an agenda item from the Human Resources Committee, this announcement was introduced in meetings that focused on the employer's anti-union campaign. The announcement was also posted, thereby making the information available to all Sheraton staff. Even though the announcement does not specifically state that the benefit eligibility expansion will occur, it is clear that the Sheraton intended to seek the expanded eligibility requirements upon renewal of its insurance package. In the context of the union organizing campaign, and given the manner in which the benefit eligibility requirement expansion was introduced, I find that this announcement constitutes undue influence within the meaning of the Act. I see no reason to depart from the Board's jurisprudence in this area as noted in *Canac Kitchens Limited*, (cited above) and *The Globe and Mail*, [1982] OLRB Rep. Feb. 189.

76. I also conclude that another threat to job security occurred pertaining to the issue of contracting out based on the evidence introduced about the housekeeping wage comparison chart and the "B.E.C.A.U.S.E." memo. Despite the fact that Mr. Zappitelli explained that the missing wage rate for laundry staff at the comparator hotel was due to contracting out, it is clear that he did not assure employees during that meeting that laundry would remain in-house at the Sheraton in the event of unionization. Furthermore, having carefully considered the evidence with respect to the "B.E.C.A.U.S.E." memo, I cannot accept that Mr. Zappitelli was confused and thought that the Union may have prepared the memo. The memo clearly contained a direct threat to job security which caused concern among employees. In light of the contracting out information previously mentioned at the June 2, 1995 housekeeping meeting, the memo could only have reinforced doubt in employees minds about the future of certain positions in the housekeeping department if the Sheraton became unionized. Given the existence of the direct threat to job security, it is also troubling that the memo was left posted for a good portion of the day on June 10, 1995, and was not even removed from all of the posted locations until the following day. If Mr. Zappitelli was truly concerned about the memo, I find his decision not to remove it immediately represents a response that is inconsistent with his alleged concern about the memo. Having security spend over two hours investigating the memo before ordering its removal can only be seen as a delay during which the memo would come to the attention of more employees. The Sheraton's motive with regard to the memo are also brought into doubt by the fact that other managers, including Mr. Zappitelli's son (who did not testify), saw the memo posted early in the morning and not only failed to remove it on their own accord, but did not advise Mr. Zappitelli of its existence until noon that day.



77. Similar omission, on the part of management, occurred with respect to the defaced posters which were left posted for a few weeks in constant view. On the basis of the evidence before me I find that management ignored the existence of the derogatory statements about the Union. I find it extremely unlikely that management employees failed to notice the defaced posters, given the locations posted, their bright colour and the defaced writing which was blatantly marked on each of the posters. Although Ms. McIntyre saw the defaced posters, her explanation for not reporting them to Mr. Zappitelli was not credible, given her knowledge of her responsibility as a manager to report its existence pursuant to the Sheraton's policy prohibiting the defacing of company property. The failure to remove these posters, in their defaced form, represents another example of management permitting anti-union visual displays to remain in constant view of employees in order to discredit the Union and to attempt to dissuade employees from associating with the Union. Moreover, the defaced posters came into view following the meetings of June 1 and 2, 1995 in which remarks were made which have been found to have intimidated or threatened employees in violation of section 65 of the Act.

78. With regard to the petition, I have determined the Sheraton must have assisted in the genesis of the petition and that management provided additional assistance by allowing it to be freely and openly circulated by Mr. Lair and others throughout the Hotel during working hours. In light of my findings pertaining to the conversation between Mr. Alam and Ms. Nicol in early June, 1995 and the conversation between Mr. Zappitelli and Ms. Nicol on June 30, 1995, I can only doubt the credibility of Mr. Alam's testimony that he was not involved in the petition and the testimony of Mr. Zappitelli that he was not aware of the petition until the hearing of this matter. Mr. Towne was not called to testify about approaching Mr. Alam, which leads me to draw an adverse inference that Mr. Alam did not exclude himself from assisting in the petition. Similarly, Mr. Zappitelli's warning to Ms. Nicol not to divulge information, which I have concluded was information about the petition, confirms Ms. Nicol's understanding that Mr. Zappitelli and Mr. Alam were involved in the petition.

79. I have concluded that Mr. Zappitelli's discussion with Ms. Nicol on June 30, 1995 constitutes a violation of section 82 of the Act. Despite concerns raised by the Union about divulging names of witnesses, and my caution to the parties, Mr. Zappitelli called Ms. Nicol into his office on June 30, 1995, and warned her not to reveal confidential information. Having considered the testimony of Mr. Zappitelli and Ms. Nicol, the only plausible conclusion I can reach is that Mr. Zappitelli was warning her about the petition, which was to be the subject matter of her testimony on July 4, 1995. Her reaction was a feeling of nervousness and of being intimidated. I have determined that Mr. Zappitelli intended to and did intimidate Ms. Nicol with respect to her testimony in these proceedings contrary to the protection afforded to witnesses under section 82 of the Act and, he did so in face of the Board's caution.

80. On the basis of all of the evidence before me, I have concluded that the discipline and transfer of Mr. Wilson on May 20, 1995 was motivated, in part because of Mr. Wilson's involvement in the Union's organizing campaign. The Board's jurisprudence establishes that the onus lies with the employer to prove, on a balance of probabilities, that the discipline was not motivated or tainted in part by anti-union considerations (see, for example, *The Barrie Examiner*, [1975] OLRB Rep. Oct. 745 and *Tate Andale Canada Inc.*, [1994] OLRB Rep. June 781). It is also clear that in such cases, the Board must examine the circumstances surrounding an employer's actions to determine if any inferences may be drawn with respect to the true motivation behind the discipline (*Tate Andale*). Reviewing the evidence as a whole, I am not convinced that the reasons for disciplining Mr. Wilson were wholly motivated due to his altercation with Ms. Piper on May 19, 1995 and the other incidents mentioned in the warning letter of May 20, 1995. There is no doubt that Mr. Wilson has not been an "ideal" employee during his relatively short employment with the Sheraton. I



am not satisfied, however, that the allegations of harassment by Mr. Zappitelli and Ms. Fortuna have been established as motivated by anti-union considerations. Nevertheless, there are a number of circumstances, based on the evidence before me, that contributed to my determination that the May 20, 1995 discipline was driven, in part, by Mr. Wilson's role in the union organizing campaign.

81. First, the insufficiency of the investigation of Ms. Piper's complaint and the failure to allow Mr. Wilson the full opportunity to explain his version of the events, leads me to question the validity of the employer's justification for discipline. Additionally, given the failure of the Sheraton to call Ms. Toth, and based on the testimony of Mr. Balkwell, the weight to be assigned to Ms. Piper's and the Sheraton's characterization of Mr. Wilson's behaviour as threatening is somewhat lessened. Although Mr. Zappitelli may have held concerns about Mr. Wilson, due to his suspicion of Mr. Wilson's criminal record, it was evident from his testimony that he may have over-reacted and jumped to conclusions about unexplained gaps in Mr. Wilson's employment history which did not exist. Secondly, two of the incidents referred to in the final warning letter had not been brought to Mr. Wilson's attention prior to his receipt of the letter, which further causes me to doubt the Sheraton's stated reasons for the discipline.

82. Thirdly, the timing of the discipline and the transfer to the laundry area must be measured against the circumstances of Mr. Wilson's involvement in the Union's organizing campaign. Counsel for the Sheraton described the transfer as not constituting discipline since Mr. Wilson did not suffer a reduction in pay and was not restricted in his contacts with other employees. On the basis of the May 20, 1995 final warning letter, I cannot accept counsel's submission. The letter and the discussion with Mr. Wilson on May 20, 1995 stated in clear terms that he was being disciplined and that he was being transferred to the laundry area pending further investigation. As of the completion of this hearing, the investigation of Mr. Wilson's conduct had not been completed and he remained in the laundry area. In the capacity of laundry detail, Mr. Wilson was under much closer supervision by management not only in physical location, but also in his restricted movement as a laundry staff member as compared to fairly unrestricted movement as a houseman. Although he was not restricted from entering staff areas, he was barred from public areas and guest floors of the hotel. Such restriction is in noticeable contrast to the freedom permitted to Mr. Lair and others in their circulation of the petition throughout the Hotel.

83. My findings with respect to Ms. McIntyre's monitoring Mr. Wilson's union activity through questions of Mr. Overall provides support for the conclusion that an inference must be drawn that part of the purpose of the discipline was to enable management to monitor Mr. Wilson's union activity more closely. Finally, Mr. Zappitelli's explanation that the investigation of Mr. Wilson's conduct would be completed when the hearing was finished also raises a doubt about the underlying cause of the discipline imposed as alleged by the Sheraton. Even though the Sheraton may have taken some comfort in its decision to discipline for safety reasons by the subsequent attempt by Mr. Wilson to contact Ms. Piper on May 25, 1995, I remain satisfied that the discipline of Mr. Wilson was tainted by his union involvement.

84. Based on my findings above, it is clear that the Sheraton violated sections 65, 67 and 82 of the Act throughout the union's organizing campaign and subsequent to the filing of the application for certification. The cumulative effect of the various violations of the Act by the Sheraton has resulted in a situation where the true wishes of the employees respecting Union membership cannot be ascertained. In the final analysis, even assuming a representation vote could be an available remedy under section 9.2, I would not have ordered a vote because, based on the nature and extent of violations, I am convinced that the true wishes of employees could not be ascertained. Through the captive audience meetings held by Mr. Zappitelli and the poster campaign, threats, in the face of Union certification, to economic benefits and job security were prevalent. Further,

part-time employees were subject to undue influence regarding benefit eligibility expansion. In the midst of such Employer activity and interwoven with numerous disparaging remarks about this Union and unions in general, employees were repeatedly reminded about how to rescind a union membership card. I am also satisfied that the discipline of Mr. Wilson and the targeting of the housekeeping department had a direct impact on the Union's organizing efforts. Also, the violations involving the petition enhance the cumulative nature and effect of unlawful employer activities. Despite the size of the workforce, I am satisfied that Mr. Zappitelli's message about the Union permeated throughout all staff areas of the Hotel, particularly through the poster display. It is clear that Mr. Zappitelli was of the view that all employees had been given the same information about the Union. Like in *Domus Industries* (cited above), "the well had become poisoned". To conclude that only the 30 employees who attended the three meetings of May 12, June 1 and 2, 1995 knew of or learned of the attempts to intimidate or coerce, would in effect ignore the reality of the workplace.

85. Given my findings and legal conclusions, I am satisfied that the preconditions of section 9.2 have been met by the Union. Namely, I have determined that the Sheraton contravened the Act and as a result of such breaches, the true wishes of the employees cannot be ascertained. For all of the reasons stated, I allowed the Union's application for certification under section 9.2 of the Act.

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**2320-95-G United Brotherhood of Carpenters and Joiners of America, Local Union 2050, Applicant v. Toronto Dominion Bank, Responding Party**

**Construction Industry - Construction Industry Grievance - Board in previous decision finding that employer bound by provincial agreement, but that union estopped from relying on sub-contracting provision of provincial agreement until issuance of that decision - Board not accepting employer's argument that estoppel should apply to contracts entered into after issuance of decision if tendering process commenced prior to Board's decision - Board finding that provincial agreement breached and allowing grievance**

**BEFORE:** *M. K. Joachim*, Vice-Chair, and Board Members *W. H. Wightman* and *H. Peacock*.

**APPEARANCES:** *N. L. Jesin* and *Bryon Black* for the applicant; *F. G. Hamilton* and *Sharon Flanagan* for the responding party.

**DECISION OF THE BOARD;** December 12, 1995

1. This referral of a grievance to arbitration pursuant to section 126 of the *Labour Relations Act*, 1992 (now section 133 of the *Labour Relations Act*, 1995) was filed with the Board on September 14, 1995. For ease of reference the applicant will be referred to as "the union" or "the Carpenters" and the responding party will be referred to as "the employer" or "the Bank" throughout the remainder of this decision.

2. This grievance involves the interpretation and application of a previous decision of the Board. In *United Brotherhood of Carpenters and Joiners of America Local 785 v. Toronto Dominion Bank*, [1995] OLRB. Rep. May 686 ("TD Bank") a different panel of the Board held that the Bank is bound to the provincial collective agreement between the Carpenters Employer and



Employee Bargaining Agencies, (the “Carpenters Provincial Agreement”) and also held that the union was estopped from relying on the subcontracting provisions of the provincial agreement until the issuance of the above decision. At paragraph 95, the Board stated:

95. In the result we have decided that the requisite notice which brings to an end the estoppel and which appropriately considers the past reliance of the Bank comes with the issuance of this decision. The estoppel therefore does not apply to contracts entered into after this date. With this decision the Bank knows that the union is asserting its bargaining rights and intends to enforce those bargaining rights. As a result of this decision the Bank also knows that its arguments of abandonment have not been accepted, it is required to recognize the union and comply with *all* of the provisions of the collective agreement including the sub-contracting provisions. It knows that any future dealing with outside contractors will be affected by those bargaining rights and can govern itself accordingly (see also for example *Aluma Systems Canada Inc.*, [1994] OLRB Rep. Nov. 1469).

3. The Board’s decision in *TD Bank*, dated May 1, 1995, was issued on May 3, 1995. The Bank sent a Letter of Intent to enter into a contract with respect to construction work at the Owen Sound Toronto Dominion Bank, 901-2nd Avenue East (the “Owen Sound” project) to Al-Jen Construction on June 13, 1995 and subsequently signed a contract with it on August 1, 1995. Al-Jen Construction is not a signatory to the Carpenters Provincial Agreement.

4. The union asserts that the Bank is in breach of Article 4 (the subcontracting provision) of the carpenters’ collective agreement because it entered into a contract with a non-signatory to the agreement, after the issuance of the *TD Bank*’s decision of May 3, 1995. The Bank asserts that the bidding process on the Owen Sound project began before May 3, 1995 and therefore it was not affected by the *TD Bank* decision.

5. The Board heard the evidence of Michael Grey, vice-president and chief architect at the Bank, Sharon Flanagan, assistant manager of employment standards at the Bank, and Bryon Black, manager of local 2050 of the Carpenters.

### **The Bidding process**

6. The Bank is involved in approximately 200 - 300 construction projects yearly. The preparation of construction contracts over \$100,000 is done by the architects’ department in conjunction with real estate officers operating out of four operating divisions. Projects for less than \$100,000 are managed by the operating divisions. The chief architect receives a requisition or work order from the real estate officer setting out the needed renovation, expansion or new construction. The architects’ department prepares a preliminary design, which is approved by the relevant operating division. The design must then be approved by the building committee. Then, the bid documents (drawings and specifications) are prepared. Towards the end of this process, the operating division is asked for a list of “preferred clients” who are general contractors. Any contractor who has not already done so is asked to fill out a form CCA-11 outlining their previous projects, dollar values, Bank affiliation, etc. to enable the Bank to determine their fitness for the contemplated project. It is standard Bank policy to obtain at least three bidders to any contract, and where possible, to give preference to Bank customers.

7. Once the architects’ department has the list of bidders and the bid documents are prepared, they telephone the contractors to inquire if they are interested. The interested contractors are sent the bid documents, and invited to submit a bid by the closing date. Bid documents consist of the following: invitation to bid; instruction to bidders, bid form or company letter head, supplementary bid form, list of subcontractors, supplementary general conditions, specifications, drawings, schedules, and addenda issued during the bid period. The instruction to bidders states, among



other things, that “the lowest bid or any bid will not necessarily be accepted & the Bank reserves the right to reject any & all bids.” None of the documents submitted indicated any policy or procedure prohibiting the cancellation of the bid process, prior to the award of the contract. The Bank views the invitation to bid as the start of the contract process and notes that the instruction to bidders states that it will form part of the contract.

8. The bidding procedure is reviewed by the Bank’s internal investigation department which conducts regular inspections of the bidding process and issues directives to improve the system. Mr. Grey testified that his department has no authority to deviate from the instructions of the inspection department.

9. A tender log is prepared in respect of each project and records the progress of the bid.

### **The Owen Sound Project**

10. The tender log prepared in respect of the Owen Sound project indicates that the work involved addition and renovation. The architects’ department received a preliminary list of bidders on April 4, 1995. Mr. Grey contacted the potential bidders by telephone on April 28 to ascertain their interest in bidding. The list of bidders was finalized on May 2, 1995 and the bid documents were issued by courier on May 2, 1995. The deadline for bid submissions was May 24, 1995. As will be discussed further below, although the *TD Bank* decision was issued on May 3, the Carpenters Provincial Agreement was not applied to this project. The architects’ department made a recommendation on May 26, 1995 that Al-Jen Construction’s bid be accepted. On June 12, 1995, the architect’s department received authority to award the contract. On June 13, 1995 Al-Jen Construction was faxed a Letter of Intent, advising that its bid had been accepted and enclosing contract documents for execution. On August 1, 1995 a contract was signed between Al-Jen Construction and the Bank with respect to the Owen Sound project.

### **The TD Bank Decision**

11. Mr. Grey testified that the Bank received no warning of the issuance of the Board’s decision in *TD Bank* between the last day of hearing in November 1994 and the issuance of the decision in May 1995. Ms. Flanagan testified that the Bank was unable to anticipate the various outcomes of the pending Board’s decision and therefore the Bank did not have in place any contingency plans with respect to dealing with the decision. Following receipt of the *TD Bank* decision, a meeting was held on May 11, 1995 with several senior Bank executives and the Bank’s general counsel to discuss the decision. A memorandum was issued to the operating divisions advising as follows:

Due to a recent Ontario Labour Relations Board ruling, until further notice, as of May 3, 1995 all future construction projects undertaken by the Bank in Ontario will be obliged to use members of the Carpenter’s Union for all work covered by the Carpenter’s Collective agreement and performed by the United Brotherhood of Carpenters and Joiners of America.

We will be providing you with a revised clause to be included in our tender documents that covers this point. We will also be giving you a list of trades covered by the jurisdiction of the UBCJ of A.

If jobs have been issued for tender prior to May 3, 1995 please proceed as usual. If jobs have been issued for tender after May 3, 1995 please delay the closing of the tender until we can prepare and have approved the revised wording to include in our contract documents. For jobs about to go to tender, please delay the issue of the tender call until we can have the revised wording approved for inclusion in our contract documents.

12. When asked the reasons for adopting this course of action Mr. Grey responded “you can - but didn’t want to stop the process...”

13. Over the course of the next month and a half the Bank prepared and revised a clause to be included in future contract documents to comply with the *TD Bank* decision. The process was completed by approximately July 11, 1995.

14. As a result of this process adopted by the Bank, the Owen Sound project, which had been issued for tender on May 2, 1995, proceeded without regard to the *TD Bank* decision. Mr. Grey testified that one of the contractors in the Owen Sound tender was in a contractual relationship with the Carpenters. However, he indicated that he was not prepared to award the project to that contractor on that basis because in his view it would not be fair to the other contractors. He indicated that the option of retendering, and thereby delaying, the project would have affected the profitability of that particular branch.

### The Union’s Arguments

15. The union relied on paragraph 95 of the *TD Bank* decision, quoted above. The union acknowledged that it was estopped from asserting the union security clauses of the collective agreement, and in particular, the subcontracting clause, against the Bank until the issuance of the Board’s decision on May 3, 1995. On a plain reading of the *TD Bank* decision, the estoppel does not apply to contracts entered into after that date. They argued that the Bank entered into the contract with Al-Jen Construction on June 13 or August 1, clearly after May 3, 1995. Al-Jen is not a signatory to the Carpenters Provincial Agreement. Accordingly, the Bank is in breach of Article 4 (the subcontracting provision) of that agreement.

16. The union argued that the Bank’s position that the *TD Bank* decision only applied to bids processed before May 3, amounts to a request to reconsider or vary the *TD Bank* decision.

17. The union noted that the Bank did not take any steps to prepare for the pending *TD Bank* decision and argued that the union should not suffer from their lack of preparation.

### The Bank’s Arguments

18. The Bank argued that it acted reasonably and responsibly in response to the *TD Bank* decision. The Bank asked the Board to consider the lack of warning before receipt of the *TD Bank* decision, the difficulty of anticipating the potential outcomes, and the necessity to review the decision, draft a new clause, and amend its internal policies in response to the decision.

19. The Bank argued that paragraph 95 of the *TD Bank* decision, when read as a whole, incorporates by reference the decision of the Board in *Aluma Systems Canada Inc.*, [1994] OLRB Rep. Nov. 1469 (“*Aluma Systems*”). In *Aluma Systems* the issue was whether the employer (referred to in the decision as “Aluma Systems” or “UMACS”) a large supplier of rental scaffolding, was bound to the Labourers’ ICI collective agreement and, if so, whether and how long the union should be estopped from asserting its rights under that agreement. The Board held that Aluma Systems was bound to the applicable collective agreement but that the union was estopped from asserting its rights until the issuance of the Board’s decision. At paragraph 72, the Board stated:

In this case, we are of the view that the appropriate time frame for the estoppel is in reference to the date of issuance of this decision. Thus, any contracts which UMACS had bid on or any project commenced prior to the date of this decision may be completed in the manner to which the employer had already committed. However, any work tendered and received after the date of this decision would have to be done in compliance with the responding party’s obligations

under the provincial ICI agreement with the Labourers' International Union of North America. Our intent is that the terms of the agreement are to be applied to work obtained after the issuance of this agreement.

20. The Bank argued that the reference in paragraph 95 of the *TD Bank* decision to the *Aluma Systems* decision indicates that the Bank is not bound to the Carpenters Provincial Agreement with respect to bids commenced prior to May 3, 1995.

21. The Bank noted that the bid process is associated with costs and that it accords with the reasonable expectations of the parties that bids should be completed on the terms upon which they are commenced. The Bank referred to *Leading Investments v. New Forest*, (1981) 34 O.R. (2d) 175 (Ont. C.A.) which stands for the proposition that a Court should be guided by the reasonable expectations of the parties so long as it is compatible with their contract. The Bank also referred to the Board's test of reasonable expectations of employees in statutory freeze cases, as set out in *Canadian Union of United Brewery Flour, etc. Workers v. Simpsons Ltd.* (1985) 85 CLLC 14, 233.

### Decision

22. In the Board's view, the meaning of paragraph 95 of the *TD Bank* decision is clear. In that panel's words, "the estoppel therefore does not apply to contracts entered into after [the issuance of the decision]". The *TD Bank* decision was issued on May 3, 1995. The Bank entered into a contract with Al-Jen Construction after that date, either on June 13, 1995 through its Letter of Intent or on August 1, 1995 when it executed the contract documents. At that time, by virtue of the *TD Bank* decision, the Bank was bound to the terms of the Carpenters Provincial Agreement. There is no dispute that the Bank did not comply with that agreement in entering into its contract with Al-Jen Construction. Accordingly, the Bank is in breach of the agreement.

23. The Board rejects the Bank's argument that paragraph 95 of the *TD Bank* decision incorporates the *Aluma Systems* decision by reference. We read the reference to *Aluma Systems* in paragraph 95 as support for the Board's decision to end the estoppel on the issuance of the Board's decision. Paragraph 95 must be considered in light of the Board's discussion of the length of the estoppel beginning at paragraph 87. It should be noted that in *TD Bank* the employer had argued that the estoppel was permanent and pertained in effect for the entirety of the agreement. The union had argued that any estoppel was brought to an end with a telephone call referred to earlier in the decision or with the filing of its grievance. The Board rejected both arguments and determined instead that the estoppel ended with the issuance of its decision, and, in our opinion, referred to *Aluma Systems* as an example of a Board decision in which the length of an estoppel was determined in a similar way.

24. In paragraph 95 of *TD Bank*, the Board specifically stated that the "estoppel therefore does not apply to contracts entered into after the issuance of this decision". In *Aluma Systems*, the Board ruled that the estoppel did not apply to "any contracts which UMACS had bid on or any project commenced prior to the date of this decision". There is a difference between entering into a contract and making a bid or tender, or commencing a project. The remedies ordered in *Aluma Systems* and *TD Bank* are not the same. Therefore, to read paragraph 95 of the *TD Bank* decision as incorporating *Aluma Systems* by reference would create an internal inconsistency in the *TD Bank* decision. We decline to find that the Board in the *TD Bank* decision intended such an inconsistent result.

25. We note that the position of the responding party in *TD Bank* is significantly different from the responding party in *Aluma Systems*. In *Aluma Systems*, the employer was in the position of a contractor who bids on projects. The bid price could be affected if the employer were bound



to a collective agreement. The Board in *Aluma Systems* appears to recognize the potential prejudice which the employer could suffer if a bid made before the issuance of the *Aluma Systems* decision was accepted, and the employer was required to meet the bid price and fulfil its obligation under the Labourers Provincial Agreement. In this case, the circumstances are different. The Bank is not in the position of a contractor with respect to the bidding process. The Bank does not bid on projects; rather, it accepts bids. The prejudice to the Bank arises at the time the Bank enters into a contract the timing of which is entirely within its own control. The Bank does not suffer any significant prejudice in interrupting the bidding process. It is only once the Bank has *accepted* a bid which does not include an agreement to comply with the Carpenters Provincial Agreement, that the Bank could be prejudiced by subsequently being obliged to comply with that agreement.

26. To the extent that the employer's arguments amount to a request to substitute the remedy ordered in *Aluma Systems* decision for that ordered by the Board in *TD Bank*, we decline to do so. This panel will not reconsider or vary the Board's decision in *TD Bank*.

27. With respect to the Bank's argument that it needed time to respond to the TD Bank decision, the Board finds that the panel in *TD Bank* specifically considered that need in its decision. In deciding on the length of the estoppel, the Board in *TD Bank* stated, at paragraph 87:

87. ... The length of time during which a trade union is prohibited from asserting bargaining rights which otherwise exist is a matter to be determined on the facts. Perhaps, in unusual and exceptional cases it may be that the estoppel is "permanent". Thus, for example, if the conduct of the union is such that the employer cannot resume its position even upon the giving of reasonable notice by the trade union, it *may* be that the estoppel is permanent or irrevocable. More typically however the facts and circumstances of the estoppel cases dictate a result which is not a "permanent" estoppel, but an estoppel for a period of time sufficient to enable the employer which changed its position, or which relied on the trade union's conduct to its detriment, the time necessary to place itself in the same position it was in prior to the conduct or actions which gave rise to the estoppel, or the detriment on the trade union's representations. The estoppel or the suspension of the enforcement of bargaining rights is thus ended upon the giving of reasonable notice which enables the employer the opportunity to resume its former position *vis-a-vis* the union's existing bargaining rights.

28. In reaching its decision that the estoppel does not apply to contracts entered into after the issuance of the decision, the Board in *TD Bank* must be taken to have considered the principles it enunciated above. In the *TD Bank* case the Board drew a clear line to establish when, in its view, it was fair to end the estoppel. It drew that line at the point when the Bank entered into a contract, after May 3, 1995. *In our view that line is a reasonable and appropriate one.* With respect to any contracts entered into after May 3, 1995 the Bank was in a position to comply with the term of the Carpenters Provincial Agreement. We reject the Bank's argument that it could not or should not be expected to interrupt its bidding process. There is no compelling reason why it cannot do so. The Bank's own instruction to bidders state that the Bank may decide to reject any or all of the bids tendered.

29. We note that there is some inconsistency in the Bank's position that it cannot reasonably be expected to interrupt its bidding process. In its memorandum to operating divisions dated May 11, 1995, the Bank stated:

If jobs have been issued for tender prior to May 3, 1995 please proceed as usual. If jobs have been issued for tender after May 3, 1995 *please delay the closing of the tender* until we can prepare and have approved the revised wording to include in our contract documents. For jobs about to go to tender, please delay the issue of the tender call until we have the revised wording approved for inclusion in our contract documents. [emphasis added]

30. To the extent that tenders have been issued after May 3, 1995 and before the instruc-

tions issued on May 11, 1995, the Bank was prepared to interrupt its bidding process. The Board sees no difference between the interruption which might be caused to the bidding process for those tenders issued between May 3, 1995, and May 11, 1995, and those tenders issued before May 3, 1995.

31. On the Owen Sound project, the Bank issued its tender to the contractors on May 2, 1995. According to Mr. Grey's evidence, an instruction to bidders is included with the tender documents and form part of the eventual contract. The instruction to bidders specifically provides that the Bank may decide to reject any or all bids. In our view, there is no compelling reason that the Bank could not have cancelled the tender and retendered, or modified the existing tender, to achieve compliance with the *TD Bank* decision. The bids were not received until May 24, 1995. The Letter of Intent to enter into a contract with Al-Jen Construction was not sent until June 13, 1995 and the contract was not executed until August 1, 1995. The Bank entered into a contract well after May 3, 1995. It was obliged to comply with the Carpenters Provincial Agreement with respect to that contract. It did not do so. Accordingly, the Bank breached the Carpenters Provincial Agreement.

32. The matter is remitted to the parties to determine the damages owing as a result of this breach. If the parties are unable to resolve this issue, this panel remains seized.

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## COURT PROCEEDINGS

**2526-89-G (Court File No. 210/92) Ellis-Don Limited, Applicant v. The Ontario Labour Relations Board and International Brotherhood of Electrical Workers, Local 894, Respondents**

Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

Board decision reported at [1992] OLRB Rep. Feb. 147.

*Ontario Court of Justice (General Division), Divisional Court, Saunders, Dunnet and Adams JJ., December 20, 1995.*

**Adams J.:** Ellis-Don Limited ("Ellis-Don" applies for judicial review to quash a decision of the

Ontario Labour Relations Board ("the Board") dated February 28, 1992. The decision upheld a grievance referred to the Board by the Respondent, International Brotherhood of Electrical Workers, Local 894 Peterborough ("Local 894"). The grievance alleged that Ellis-Don was bound by and violated the provincial agreement between the Electrical Trade Bargaining Agency of the Electrical Contractors' Association of Ontario and the International Brotherhood of Electrical Workers (the "IBEW") and the IBEW Construction Council of Ontario ("the provincial agreement"). Ellis-Don seeks judicial review on the grounds that the Board violated the principles of natural justice and that the decision is patently unreasonable.

Ellis-Don is a large general contractor which operates in the industrial, commercial and institutional sector ("ICI sector") of the construction industry in Ontario. On January 12, 1990, Local 894 filed a grievance alleging that Ellis-Don had violated Article 505 of the provincial agreement by engaging a non-union electrical sub-contractor on its project to build the Environmental Science Building at Trent University in Peterborough. Article 505 provides:

505 Subcontracting

The Company shall not directly or indirectly sublet any work under the jurisdiction of this Agreement to any other Employer or Employee who is not a party to an IBEW Construction Agreement nor require any employee to work on a piecework basis.

Ellis-Don opposed the grievance on the basis that it was not bound by the provincial agreement. Local 894 Maintained that Ellis-Don was bound because it had been a party to a "working agreement" signed in 1962 prior to the institution of province-wide bargaining in the construction industry in 1978.

In 1962, one of Ellis-Don's construction superintendents signed a document entitled "Working Agreement" ("The working agreement") between Ellis-Don and the Building and Construction Trades Council of Toronto and Vicinity ("the Council"). Although Local 894 was not a member of the Council in 1962, Local 353 of the IBEW ("Local 353") was, and continues to be, the IBEW local with jurisdiction in the Toronto area. Local 894, therefore, claimed bargaining rights in relation to Ellis-Don through the effect of subsequent legislation which created province-wide bargaining and ultimately "spread" area bargaining rights province-wide.

When the working agreement was signed, Ellis-Don had no trades persons in the Toronto area working on construction sites as its first project in the City of Toronto, the Zoological Building at the University of Toronto, was not yet underway.

The working agreement contained the following articles:

The parties hereto hereby expressly covenant and agree as follows:

**PURPOSE**

1. The general purpose of this agreement is to establish mutually satisfactory relations between the Company and its employees, to eliminate unfair practices; to establish and maintain satisfactory working conditions, hours of work and wages and to stabilize and encourage the construction industry.

**RECOGNITION**

2. The Company recognizes the Council and its affiliated unions as the collective bargaining agency for all its employees.
3. The Company agrees that it will employ only members of the unions affiliated with



the Council and will let contracts or sub-contracts only to individuals or companies whose employees are members in good standing in the unions affiliated with the Council and will do all things necessary to insure that only members of the unions affiliated with the Council are employed in construction work in which the Company is engaged.

4. The Council through its affiliated unions will supply competent workmen to do the work of any trade or calling that may be required by the Company in the trades represented by the Council.

#### WAGES, HOURS AND WORKING CONDITIONS

5. The Company agrees to recognize and be bound by the agreements existing between each of the unions affiliated with the Council and the Toronto Builders' Exchange and specifically agrees that the provisions relating to wages, hours and working conditions set forth in the said agreements shall be binding on the Company. In the event any of the said conditions of any of the said agreements are altered or amended at any time during the currency of this agreement, the Company shall be bound by such alterations and amendments. The said agreements are available for inspection by the Company at the office of the Council at 226 Queen Street West, at the Toronto Builders' Exchange, 1104 Bay Street, Toronto; and at the Department of Labour, Parliament Buildings, Toronto. The Council shall notify the Company of any amendments or alterations of the said agreements.

#### TERMINATION

6. This agreement shall remain in force for a period of one year from the date hereof and shall continue in force from year to year thereafter unless in any year not less than sixty days before the date of its termination, either party shall furnish the other side with notice of termination of, or proposed revision of, this agreement; PROVIDED, however, that this agreement shall remain in full force and effect until completion of all jobs that have been commenced during the operation of this agreement.

Historically, the Toronto Builders' Exchange, which later became the Toronto Construction Association, was comprised of general contractors, referred to as member companies, and entered into agreements on behalf of the member companies with trade unions which represented only the six civil trades (i.e. carpenters, labourers, operating engineers, operative plasterers, rodment and bricklayers). Thus, neither the Toronto Builders' Exchange nor the Toronto Construction Association entered into a collective agreement with Local 353 or any other local of the IBEW.

Ellis-Don entered into collective agreements with the trade unions representing the six civil trades and, as a result of legislation, became bound by the series of provincial agreements applicable to those trades in the ICI sector commencing May 1st, 1978. However, it has been Ellis-Don's position that it is not bound to any other provincial agreement, including the provincial agreement pertaining to electricians.

At the hearing before the Board, Ellis-Don emphasized that its practice had been to engage only members of the six civil trades on a "direct hire" basis and to sub-contract the balance of the work. It submitted that it never engaged electricians on a "direct Hire" basis and that no electrician ever became its "employee". It further asserted that it did not consider itself bound to sub-contract electrical work only to unionized sub-contractors. Ellis-Don provided evidence which it said demonstrated that it had subcontracted to electrical sub-contractors regardless of union affiliation or the lack of union affiliation. Ellis-Don disputed the intent of the working agreement to bind signatory contractors with respect to employees not directly hired. It also challenged the legal validity of the working agreement to govern subcontracting in respect of a trade it would not otherwise directly employ. To support these positions, Ellis-Don sought to distinguish *Harbridge and Cross*

*Limited*, [1988] O.L.R.B. Rep. April 391; [1989] O.L.R.B. Rep. July 824 (judicial review application dismissed); [1989] O.L.R.B. Rep. October 1093 (application for leave to appeal denied), a decision argued by Local 894 to be directly on point.

The Board rejected Ellis-Don's argument that the working agreement could not form the basis of Local 353's bargaining rights at paragraph 32 of its decision:

The working agreement on the one hand, represents voluntary recognition by the employer of the trade union as bargaining agent and, on the other hand, obligates the union to refer its members who possess the skills needed by the employer to perform work. In the instant case, Ellis Don in executing the working agreement, assured itself of a supply of skilled workers. In return, Ellis-Don voluntarily recognized *all* the affiliates of the Building Trades Council and bound itself to subcontract only to subcontractors whose employees were members in good standing of affiliates of the Building Trades Council. Whether or not, at the time of executing the working agreement, it was open to Ellis-Don to seek to pick and choose which affiliates were being accorded voluntary recognition, that was not the basis on which the document was offered and signed.

The Board also refused to accept Ellis-Don's argument that the reasoning in *Harbridge and Cross Limited* with respect to the legal effect of the working agreement was flawed. The Board concluded at paragraph 36 of its decision that the working agreement constituted a series of voluntary recognition agreements between Ellis-Don and all the affiliates of the Council, not just the six civil trades. The fact that Ellis-Don had not trades persons working in the electrical trade at the time it signed the working agreement did not vitiate the agreement's legal effect in the Board's view. Accordingly, the Board found that Local 353 had acquired bargaining rights in relation to Ellis-Don.

In response to the above findings, Ellis-Don submitted that the acquired bargaining rights were, in any event, abandoned by Local 353 prior to the introduction of the statutory scheme for province-wide bargaining in 1978.

The *Ontario Labour Relations Act* was amended in 1970 to provide for the accreditation of employer organizations in the construction industry. Pursuant to those amendments, the Board was required, on an application for accreditation, to determine each of the employers in a defined bargaining unit of employers. The respondent union and applicant employer organization were required to file accurate schedules of the employers affected by the application for accreditation.

In 1971 the Electrical Contractors' Association of Toronto commenced an accreditation proceeding to become the accredited bargaining agent for employers for whom Local 353 had bargaining rights. As a respondent to the application, Local 353 was required, pursuant to Form 87 of the Board's forms, to file Schedules "E", "F", and "G" listing all employers whose employees Local 353 was entitled to bargain on behalf of, and to indicate the source of those bargaining rights with respect to each named employer. Ellis-Don was not included by Local 353 on any of these schedules, including Schedule "F" which was the schedule listing employers who had not employed employees performing work subject to the application within the period of one year prior to the date of making the application. This was the schedule on which Ellis-Don should have been listed by Local 353 if Local 353 believed it had bargaining rights with Ellis-Don. Officials of Local 353 affirmed the accuracy of the filings by their signatures on the schedules. On January 9, 1975, an accreditation order was issued.

Local 894, in pursuing its grievance in 1990, did not call evidence to explain the failure of Local 353 to include Ellis-Don on Schedule "F" in that earlier accreditation proceeding. Counsel for Local 894 had been given notice that Ellis-Don would ask the Board, in the absence of such evidence, to

draw an adverse inference that Local 353 had abandoned any bargaining rights in respect of Ellis-Don by its failure to assert such rights at the time of the 1971 accreditation application.

In its decision released on February 28, 1992, the Board rejected the submission that the failure of Local 353 to include Ellis-Don on Schedule "F" constituted an abandonment of its bargaining rights in respect of that company. In this respect, the Board wrote at paragraph 54:

The absence of evidence to explain the omission of Ellis-Don from the schedule F filed by Local 353, IBEW in the accreditation application is of concern to the Board. The question for the Board is whether this omission, of itself, is sufficient, in the context of all the other circumstances, to cause the Board to conclude that Local 353 had abandoned the bargaining rights it had earlier obtained. The omission of Ellis-Don's name is no inconsistent with abandonment and, thus, may signify what respondent counsel asserts. However, that omission is also consistent with an assumption on the part of the Local that the accreditation application affected only specialty contractors or that schedule F speaks only to employers for whom the Local held bargaining rights but who had had employees in the past (albeit not within the previous year). It appears (and there is no cogent evidence to suggest otherwise) that the employer association represented specialty electrical contractors, not general contractors. In that context, the name of Ellis-Don may have been omitted, in the respondent union's reply, as apparently were the names of other general contractors who had signed the working agreement, to reflect the framing of the original application. The question is not what is the most reasonable or a reasonable inference from the omission of Ellis-Don's name but whether the omission signifies abandonment. In the Board's opinion, it is more probable than not that the omission of Ellis-Don's name from schedule F did not reflect an abandonment of bargaining rights. As well, the context of a consistent pattern of Ellis-Don's subletting electrical work to "union" contractors prior to the accreditation application, although not necessarily conclusive proof of the existence of bargaining rights (see paragraph 46 above), cannot be ignored. Given the Board's finding that the working agreement was duly executed by the parties and constituted a series of voluntary recognition agreements, including the voluntary recognition of Local 353, and given that the working agreement was never terminated but, rather, that at least with respect to the subcontracting of electrical work, Ellis-Don fully complied with that agreement for many years with Ellis-Don receiving the advantages of the working agreement during that period, the Board is not satisfied, as a matter of fact, that the bargaining rights of Local 353 were abandoned because of the omission of Ellis-Don's name from schedule F. In short, considering all the circumstances, the Board does not find that Local 353 abandoned its bargaining rights prior to the introduction of province-wide bargaining.

Prior to the release of this decision, the Board had prepared a draft of the decision ("the draft"). In the draft, the Board upheld Ellis-Don's position on the abandonment issue and dismissed the grievance. The draft provided, in part, as follows:

50. If the factors above do not lead to a finding of abandonment, is there any other conduct by the union which does point to that conclusion? In the Board's view, there is.

...

...

53. The accreditation process is lengthy and complex. Certainly under the Board practice in force in January 1975, the process involved a detailed examination of the schedules filed with the Board and a final determination as to whether employers named on the schedules filed by the union had granted bargaining rights or were otherwise bound to the respondent union. Local 494 [sic], the applicant herein, called no evidence to explain the failure of Local 353 to include Ellis-Don on schedule F, as would be expected if the union in the accreditation application thought it possessed bargaining rights vis-a-vis Ellis-Don. Absent an explanation, the most reasonable inference is that the union in the accreditation application assumed it did not possess such bargaining rights in 1971, when the accreditation application was filed. In effect, the union was asserting it did *not* have bargaining rights for *Ellis-Don*. The respondent union in the accreditation application must be taken to have abandoned whatever bar-



gaining rights it possessed as against Ellis-Don at the latest by that point. The mere use by Ellis-Don of union electrical sub-contractors is not tantamount to granting voluntary recognition anew once the bargaining rights created by the working agreement were extinguished.

54. the consequences of the Board's finding that bargaining rights had been abandoned by Local 353 IBEW prior to 1978 is that that trade union cannot "plug into" the province-wide scheme so that the issue of abandonment post 1978 does not arise. Local 494 [sic], the applicant in the instant grievance referral, relies on that province-wide scheme to acquire the bargaining rights which it seeks to enforce against Ellis-Don. In the Board's view, no such rights were held by Local 353 in 1978 so that the legislation in 1978 and the subsequent amendments could not extend any bargaining rights to Local 494 [sic].

A "Full Board" meeting refers to a post-hearing meeting of all the members of the Board. The draft, dated December 1991, had been prepared by Vice-Chair Tacon in consultation with the other two panel members, Employer Board Member Janet Trim and Trade Union Board Member Jack Redshaw. The draft was circulated by Vice-Chair Tacon to the Full Board prior to a Full Board meeting under cover of a memorandum dated December 6, 1991 which provided as follows:

To: Full Board

From: Susan Tacon

Re: International Brotherhood of Electrical Workers, Local 894, v. Ellis-Don Limited

As you are aware, the Ellis-Don draft discussion will be rescheduled as Jack Redshaw will be unable to attend the December 10th meeting. That date has not yet been finalized. Nonetheless, it seems appropriate to circulate the draft at this time.

Thanks.

A copy of the draft was sent to a retired member of the Board, Robert D. McMurdo ("McMurdo"). Subsequently, on December 17, 1991, McMurdo received the following memorandum from then the Chair of the Board, Mort Mitchnick, to the Full Board:

The long-awaited construction Full Board to discuss *Ellis-Don* is now scheduled for January 27th.

As usual, all members of the Board are welcome to attend, but those outside the regular "construction panel" should let Lorna know they are coming, not later than 12:30 on Thursday, January 23rd.

The draft was discussed at a meeting of the Full Board on January 27th, 1992. Invited to that meeting were all vice-chairs and members of the Board. At the time of this meeting, the Board was comprised of a Chair, and Alternate Chair, twenty vice-chairs, and forty additional members representing labour and management. After the release of the decision of February 28, 1992, McMurdo brought a copy of the draft to the attention of Ellis-Don.

It is submitted on behalf of Ellis-Don that the effect of the Full Board process was to involve persons who had not heard the evidence in a discussion of the factual underpinnings of the case and that this discussion resulted in a change of factual finding from the draft to the decision released on February 28, 1992. Counsel submitted that "the inferences" drawn by the Board in the draft were based solely on its view of the sufficiency of the evidence. It is argued the inferences were of a factual nature and that the discussions at the Full Board meeting violated the *audi alteram partem* rule and the principles laid down in *I.W.A. v. Consoliated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282. In *Consoliated-Bathurst*, the Supreme Court of Canada approved of the Full Board post-

hearing procedure but distinguished between discussions of factual matters and those of legal or policy issues. In this respect, Gonthier J. wrote at pp. 335-336:

In every decision, panel members must determine what the facts are, what legal standards apply to those facts and, finally, they must assess the evidence in accordance with these legal standards. In this case, for example, the Board had to determine which events led to the decision to close the Hamilton plant and, in turn, decide whether the appellant had failed to bargain in good faith by not informing of an impending plant closing either on the basis that a “*de facto* decision” had been taken or on some other basis. The determination and assessment of facts are delicate tasks which turn on the credibility of the witnesses and an overall evaluation of the relevancy of all the information presented as evidence. As a general rule, these tasks cannot be properly performed by persons who have not heard all the evidence and the rules of natural justice do not allow such persons to vote on the result. Their participation in discussion dealing with such factual issues is less problematic when there is no participation in the final decision. However, I am of the view that generally such discussions constitute a breach of the rules of natural justice because they allow persons other than the parties to make representations on factual issues when they have not heard the evidence.

Ellis-Don submitted that the decision represents a complete reversal of a key factual finding - abandonment - less than one month after the Full Board meeting. It submitted this raises the appearance, if not the fact, of improper interference by the Full Board and gives rise to a reasonable apprehension that the independence of the three person panel was affected by comments made by other Board Members regarding the reason Local 353 did not include Ellis-Don's name on Schedule F. Counsel argued the unfairness was compounded by the fact that Ellis-Don was never given an opportunity to cross-examine a witness from Local 353 because Local 894 did not call any evidence on the issue. Counsel emphasized that no explanation for the appearance of injustice has been given by the Board and all attempts by Ellis-Don to inquire into the matter have been resisted.

In this latter respect, counsel was referring to Ellis-Don's motion of June 9, 1992, brought to compel the attendance of the Chair, Vice-Chair Tacon, and the Registrar before an official examiner to obtain information regarding the procedures used by the Board in reaching its final decision. By order dated July 17, 1992, Steele J. in *Ellis-Don Ltd. v. Ontario (Labour Relations Board)* 95 D.L.R. (4th) 56, sitting as a single judge of the Divisional Court, allowed the motion to compel attendance. The Board appealed this order to a full panel of the Divisional Court which allowed the appeal. The Court in *Ellis-Don Ltd. v. Ontario (Labour Relations Board)* (1994) 110 D.L.R. (4th) 731 determined that Ellis-Don could not succeed on the common law test for the compellability of member of administrative tribunals and that s. 111 of the *Labour Relations Act* prevented Ellis-Don from examining the Board members.

With respect to the common law test, as set out in *Consolidated-Bathurst*, the Divisional Court concluded at p. 748:

...[T]he question of abandonment in the context of the failure of a trade union to place a contractor's name of Sch. F is one of policy when considering whether or not the absence of the name should be treated as *per se* signifying abandonment. In our view, it is this policy issue which is treated differently between the two decisions and this is precisely the kind of industrial relations issue which the Supreme Court of Canada has said may be discussed in a full board meeting: see *Consolidated-Bathurst Packaging Ltd. v. International Wood-Workers of America, Local 2-69...*, at 337 *per* Gonthier J.

The Court also noted that Ellis-Don had failed to seek a reconsideration of the Board's decision under s. 108 of the *Labour Relations Act*. In commenting on the significance of this failure, the Court stated at p. 746:

"Reconsideration" is generally a process restricted to allowing a party to adduce evidence or make representations which it did not have a previous opportunity to raise. This is precisely the situation in which Ellis-Don found itself in on discovering the draft decision and it was the process followed by *Consolidated-Bathurst, supra* when it learned its case had been discussed at a full board meeting. However, in this case, it appears that Ellis-Don moved immediately to court because it did not want the board's explanation. As Mr. Cherniak, Ellis-Don's counsel, vigorously expressed it: "We caught these people with their hand in the cookie jar." Accordingly, any uncertainty in the factual circumstances surrounding the differences between the draft and the final decisions are uncertainties Ellis-Don created by the way it has chosen to proceed.

Ellis-Don brought a motion for leave to appeal to the Court of Appeal from this judgment. The motion for leave to appeal was heard on June 13, 1994 and dismissed without reasons. Ellis-Don filed an application for leave to appeal to the Supreme Court of Canada on August 11, 1994. The application was dismissed on January 12, 1995, again without reasons.

Both the Respondent Union and Board submitted that, in the circumstances of this case, the question of abandonment was a policy issue rather than an issue of pure fact. They argued that the answer to the question of whether the failure of a trade union to list a contractor on Schedule F amounts, in and of itself, to an abandonment of bargaining rights has an impact which goes beyond the resolution of the dispute between the parties. Therefore, because it is a question which can clearly be addressed at a level of abstraction from the immediate interests of the parties, it is the kind of industrial relations issue appropriately discussed at a Full Board meeting. It was contended that the mere fact there was a change in policy following the Full Board meeting does not suggest that the Board acted in an improper manner. The uncontroverted fact of Local 353's failure to list Ellis-Don on Schedule F never changed between the draft and the decision of the Board. The draft and the decision differed only on the policy consequences of that fact - whether the failure of a trade union to list an employer on Schedule F of necessity dictates a conclusion of abandonment of bargaining rights.

The Respondents submitted that a conclusion of abandonment, drawn only from the fact that Ellis-Don was not listed on Schedule F, is no more a question of pure fact than is a determination of negligent driving or the application of the legal doctrine of *res ipsa loquitur*. Rather, it is a legal or policy determination applied, in these circumstances, to a fact which remained unchanged both before and after the Full Board meeting. It was also submitted that the issue before the Board was whether an omission from Schedule F should amount to abandonment. It was not, as characterized by Ellis-Don, whether Local 353 actually "intended" to abandon its bargaining rights in respect of that company.

Finally, the Respondents submitted that any uncertainty regarding the content of discussions at the Full Board meeting is the result of Ellis-Don's unwillingness to avail itself of the opportunity for reconsideration by the Board. In other words, it was open to Ellis-Don to advise the Board of the information received from McMurdo and to raise its concerns about the differences between the draft and the decision. The Board would then have had the opportunity to explain. This was the procedure followed in *I.W.A. v. Consolidated-Bathurst, supra*. It was therefore submitted that Ellis-Don should have sought reconsideration of the Board's decision prior to applying for judicial review.

I agree that the outstanding issue before the panel was largely one of industrial relations policy within the meaning of *I.W.A. v. Consolidated-Bathurst Packaging Ltd., supra*, at p. 335, per Gonthier J. In effect, the issue was "what legal standards applied to those facts". The fact that Local 353 failed to include Ellis-Don's name on Schedule F remained unchanged in both the draft and the decision. Also remaining unchanged were the factual details of the accreditation application which had been brought before the Board almost twenty years earlier. The Board concluded in its



decision that these facts, standing alone and unexplained, should not dictate the conclusion that Local 353 had abandoned its bargaining rights in respect of Ellis-Don. This determination had a substantial and obvious policy component, notwithstanding the particular manner in which the panel expressed itself. In this sense, it involved a matter which could be addressed at a level of principle without offending the requirements of natural justice.

Indeed, even if one accepts Ellis-Don's characterization of the issue as being an identification of Local 353's "intent" or "motive" in omitting Ellis-Don's name from Schedule F, the role of policy very much remains: See, for example, the treatment of intent in an unfair labour practice setting in *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221 (3rd Circ. 1963), at pp. 228-30 and as discussed in W.E. Oberer, "The Scienster Factor in Sections 8(a)(1) and (3) of the *Labor Act*: Of Balancing, Hostile Motive, Dogs and Tails" (1967), 52 Cornell L.Q. 491; and T. Christansen and A.H. Svanoe, "Motive and Intent in the Commission of Unfair Labour Practice: The Supreme Court and the Fictive Formality" (1968), 77 Yale L.J. 1269 and P.N. Cox, "A Re-examination of the Role of Employer Motive under Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act" (1982), 5 U. of Puget Sound L. Rev. 161. The Board had several policy options open to it on the facts found: (i) the absence of Ellis-Don on Schedule F constituted *per se* evidence of bargaining right abandonment; (ii) the omission gave rise to a rebuttable presumption of abandonment, thus requiring an explanation from Local 353; (iii) the omission was a factor to be considered along with all the other evidence before the Board; or, finally (iv) the failure of Local 353 to place Ellis-Don's name on Schedule F was irrelevant, in the circumstances, to the issue of abandonment. Ultimately, the Board concluded the failure of Local 353 to include Ellis-Don on Schedule F was a factor to be considered and was not determinative in the circumstances. The Board, applying its labour relations expertise, could also envisage a variety of reasons for the omission of Ellis-Don from Schedule F some twenty years earlier based on the record before it. Simply put, the Board was unwilling to hold, even in the absence of an explanation from Local 353, that the omission should be conclusive.

The Board's decision was consistent with the unlikelihood of a trade union "intending" to abandon or give up its bargaining rights. This unlikely possibility is reflected in the Board's jurisprudence and "policy" which requires unequivocal evidence that a trade union has "slept on its rights": See *Lorne's Electric*, [1987] O.L.R.B. Rep. Nov. 1405; *The Hudson's Bay Company*, [1993] O.L.R.B. Rep. June 563, and *Toronto Dominion Bank*, [1995] O.L.R.B. Rep. May 686. Indeed, dissenting Board Member Trim saw Local 353's failure to include Ellis-Don's name on Schedule F as an admission by it that the 1962 working agreement was never intended to apply to Ellis-Don. In other words, she found the omission of Ellis-Don's name signified, not abandonment, but rather an understanding on the part of Local 353 that it did not hold bargaining rights for Ellis-Don in the first place. The Board also noted that it no longer concerns itself with the content of Schedule F in accreditation applications, a related policy determination. Accordingly, there is no basis for the speculation urged upon this court by Ellis-Don that many tripartite members at the Full Board meeting may have participated in the "fact finding" of the panel contrary to the principles articulated in *Consolidated-Bathurst*. The complex and sophisticated decision-making engaged in by this senior administrative agency ought not to be interfered with on the basis of a "black letter" invocation of either the process of "fact finding" or the principles of natural justice. Decision-writing, in both our courts and administrative tribunals, is properly a consultative process. The regulation of post-hearing decision-making, therefore, must be realistic and sensitive to the inevitable interaction of fact and policy. The Court of Appeal has made this clear in *Khan v. College of Physicians and Surgeons of Ontario* (1992), 94 D.L.R. (4th) 193 where Doherty J.A. Stated at pp. 223-4

There is no single formula or procedure referable to the drafting process that can be uniformly applied across the very broad spectrum of decision-making, when determining whether the involvement of the non-decision-maker in the drafting process compromised the fairness of the

proceedings or the integrity of the process. The nature of the proceedings, the issues raised in those proceedings, the composition of the tribunal, the terms of the enabling legislation, the support structure available to the tribunal, the tribunal's workload, and other factors will impact on the assessment of the propriety of procedures used in the preparation of reasons. Certainly, the judicial paradigm of reason-writing cannot be imposed on all boards and tribunals: *Consolidated-Bathurst Packaging Ltd. v. I.W.A.*, *supra*, at pp. 554-5.

It must also be recognized that the volume and complexity of modern decision-making all but necessitates resort to "outside" sources during the drafting process. Contemporary reason-writing is very much a consultive process during which the writer of the reasons resorts to many sources, including persons not charged with responsibility of deciding the matter, in formulating his or her reasons. It is inevitable that the author of the reasons will be influenced by some of the sources. To hold that any "outside" influence vitiates the validity of the proceedings or the decision reached is to insist on a degree of isolation which is not only totally unrealistic but also destructive of effective reason-writing.

In my view, the facts at hand do not indicate an improper meddling by third parties in the facts as contemplated by Gonthier J. in *I.W.A. v. Consolidated-Bathurst*, *supra*. The change in outcome of the decision simply reflects the ongoing deliberations of a panel dealing with an important industrial relations issue. If Ellis-Don suspected otherwise, it should, at least as a matter of courtesy, have given this senior tripartite administrative agency an opportunity to explain by requesting reconsideration. The parties and this Court, if necessary, would then have had the benefit of the panel's explanation and reasons in respect of the allegation.

In the alternative, Ellis-Don argued that the Board committed a patently unreasonable error by refusing to draw and adverse inference against Local 894 for failing to call evidence to explain the failure of Local 353 to include the applicant in Schedule F. In making this submission, Ellis-Don relied upon the analysis set out in the draft to attack the decision that "it is more probable than not that the omission of Ellis-Don's name from Schedule F did not reflect an abandonment of bargaining rights". Ellis-Don submitted that the unexplained refusal by the majority of the panel to draw an adverse inference against Local 894 for having failed to produce any evidence at all on this central issue was arbitrary, capricious, and patently unreasonable. In my view, the Board carefully considered all of the evidence and industrial relations considerations on the issue of the omission of Ellis-Don from Schedule F. The Board extensively reviewed the context in which this omission occurred. For example, there was evidence relied upon by Local 894 to argue that Ellis-Don had consistently sublet electrical work to "union" contractors prior to the accreditation application. In the result, while the absence of evidence explaining the omission of Ellis-Don from Schedule F was "of concern to the Board", the panel decided that the failure of Local 353 to place Ellis-Don's name on Schedule F did not, *per se*, signify abandonment and did not demand an explanation from the trade unions in the circumstances. The onus to establish and abandonment of bargaining rights was on Ellis-Don. The decision of the Board involved labour relations issues which fell squarely within the Board's expertise. The experience of the Board in the construction industry, in particular, is considerable. The Board's conclusion was not patently unreasonable. In our view, the Board was not required to draw the adverse inference against Local 894 demanded by Ellis-Don.

Similarly, the Board's decision that Local 353 possessed bargaining rights with respect to Ellis-Don as a result of the working agreement was not patently unreasonable. There was substantial evidence before the Board concerning Ellis-Don's practices in contracting for electricians during the relevant time frame. The Board considered this evidence and noted the particular scheduling and working realities of the construction industry. The Board had regard to express wording of the working agreement. The Board also considered its prior decisions on the issue of voluntary recognition and unlawful employer support in the construction industry. The Board then applied its reasoning, previously developed in *Nicholls-Radtke & Associates Limited*, [1982] O.L.R.B. Rep. July 1028 and *Eighty-Five Electric*, [1987] O.L.R.B. Rep. June 833, that the signing of a collective

agreement in the construction industry when there are no employees in the bargaining unit does not, in and of itself, constitute unlawful employer support for a trade union. Those earlier cases had held that concerns with respect to unlawful employer support do not arise where the seminal document may properly be characterized as a "pre-hire agreement". The Board's decision was therefore consistent with its prior jurisprudence in the construction industry.

The Board also held that the application of the working agreement was not restricted to the six civil trades. The conclusion was consistent with the Board's prior decision in *Harbridge and Cross Limited, supra*, a decision upheld by this Court. That case had held that the identical working agreement was not restricted to the six civil trades. In my view, the finding that Local 353 had acquired bargaining rights with respect to Ellis-Don as a result of the 1962 working agreement was again a matter which fell squarely within the Board's expertise. The result was not patently unreasonable.

The application for judicial review is dismissed. The respondent trade union shall have its costs payable by Ellis-Don and fixed in the amount \$4,500.







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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1995

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**1970-89-R:** Labourer's International Union of North America, Ontario Provincial District Council (Applicant) v. Ryder Concrete Forming Specialities Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all construction labourers, carpenters and carpenters' apprentices, rodmen and truck drivers in the employ of Ryder Concrete Forming Specialists Ltd. in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (21 employees in unit) (*Having regard to the agreement of the parties*)

**3154-94-R:** Hospitality, Commercial and Service Employees Union, Local 73, Chartered by Hotel Employees and Restaurant Employees International Union (Applicant) v. Hillside Townhouses Limited c.o.b. as The Victoria Inn, Thunder Bay (Respondent) v. Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees and Restaurant Employees International Union and Hotel Employees and Restaurant Employees International Union (Intervener)

Unit: "all front office employees of the Hillside Townhouses Limited c.o.b. as The Victoria Inn, Thunder Bay in the City of Thunder Bay, save and except Front Officer Manager, persons above the rank of Front Office Manager, sales and marketing persons, Accounting Clerk and Security Guards" (7 employees in unit) (*Having regard to the agreement of the parties*)

**3893-94-R:** Association of Allied Health Professionals: Ontario (Applicant) v. St. John's Rehabilitation Hospital (Respondent)

Unit: "all paramedical employees of St. John's Rehabilitation Hospital in the City of North York, save and except Clinical Co-ordinators, Supervisors, persons above the rank of Supervisor and employees in bargaining units for which any trade union held bargaining rights as of February 2, 1995." (46 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**4251-94-R:** Ontario Public Service Employees Union (Applicant) v. Alcoholism & Drug Addiction Research Foundation (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the Alcoholism & Drug Addition Research Foundation in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, Physicians, Residents, Post Doctorate Fellows, Interviewers, S.E.E.D. Students and Scientists" (426 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**0099-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent)

Unit: "all employees of Famous Players Inc. at the Rideau Centre Cinemas in the City of Ottawa, save and except Relief Managers, persons above the rank of Relief Manager" (18 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**0145-95-R:** Teamsters Local Union No. 419 (Applicant) v. Cottrell Transport Inc. (Respondent) v. Neil Sharpe (Intervener)

Unit: "all dependent contractors of Cottrell Transport Inc. in the Township of Vaughan, save and except dispatchers, and persons above the rank of dispatcher" (39 employees in unit) (*Having regard to the agreement of the parties*)

**0778-95-R:** The Association of Allied Health Professionals: Ontario (Applicant) v. Perth and Smiths Falls District Hospital (Respondent) v. Canadian Union of Public Employees, Ontario Nurses' Association (Interveners)

Unit: "all paramedical employees of Perth and Smiths Falls District Hospital in the Town of Smiths Falls, save and except Supervisors, persons above the rank of Supervisor, and persons for whom any trade union held bargaining rights as of May 18, 1995" (39 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1545-95-R:** Koch Transport Employees' Union (Applicant) v. Koch Transport Limited (Respondent) v. United Food and Commercial Workers International Union, Local 1977 (Intervener)

Unit: "all employees of Koch Transport Limited in the City of Cambridge, save and except forepersons and dispatchers, persons above the rank of foreperson and dispatcher, office, sales and clerical staff" (90 employees in unit) (*Having regard to the agreement of the parties*)

**1709-95-R:** United Food and Commercial Workers International Union, AFL-CIO-CLC (Applicant) v. The Warehouse Drug Store Ltd., c.o.b. as Hy & Zel's (Respondent)

Unit: "all employees of the Warehouse Drug Store Ltd., c.o.b. as Hy & Zel's in the City of Vaughan, save and except Assistant Store Managers, and persons above the rank of Assistant Store Manager, Point of Sale Co-ordinators, Graduate and Undergraduate Pharmacists including Pharmacy Interns and Apprentice Pharmacists" (51 employees in unit)

**1793-95-R:** Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees Restaurant Employees International Union (Applicant) v. Saan Stores Ltd. (Respondent)

Unit: "all employees of Saan Stores Ltd. located at 640 River Street, (Grandview Mall) in the City of Thunder Bay, Ontario, save and except store manager, assistant store manager, management trainees, persons above the rank of assistant manager, office and clerical staff and students employed during the school vacation period" (12 employees in unit) (*Having regard to the agreement of the parties*)

**1855-95-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Kannco Inc. c.o.b. as Modern Cleaners and Launderers (Respondent)

Unit: "all employees of Kannco Inc. c.o.b. as Modern Cleaners and Launderers in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, office, sales, clerical and administrative staff and students" (21 employees in unit) (*Having regard to the agreement of the parties*)

**2182-95-R:** United Steelworkers of America (Applicant) v. ASM Dispensaries Limited c.o.b. as Shoppers Drug Mart (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of ASM Dispensaries Limited c.o.b. as Shoppers Drug Mart at 3003 Danforth Ave. in the Municipality of Metropolitan Toronto save and except Assistant Merchandise Manager, Pricing Systems Manager, Head Cashier, Head Beauty Advisor, persons above the rank of Assistant Merchandise Manager, Pricing Systems Manager, Head Cashier and Head Beauty Advisor, Pharmacists, office and clerical staff" (42 employees in unit)

**2188-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Sugarbush (Britannia) Homes Inc. (Respondent)

Unit: "all construction labourers in the employ of Sugarbush (Britannia) Homes Inc. in the Municipality of



Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2413-95-R:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Chimo Hotel Ottawa as represented by Deloitte & Touche in their capacity as Receiver and Manager (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of Chimo Hotel Ottawa as represented by Deloitte & Touche in their capacity as Receiver and Manager in the City of Gloucester, save and except Supervisors, persons above the rank of Supervisor, Front Desk/Office, Clerical, Administration, Reservationist, Auditor, Purchaser, Controller and all Banquet Department staff" (98 employees in unit) (*Having regard to the agreement of the parties*)

**2414-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. S & R Car & Truck Rentals Toronto (Central) Ltd. (Respondent)

Unit: "all employees of S & R Car Rentals Toronto (Central) Ltd. in the greater Metropolitan Toronto area including the Cities of Oakville, Milton, Vaughan and the Municipalities of Peel, Markham, Oshawa and Metropolitan Toronto, save and except Assistant Managers, persons above the rank of Assistant Manager, office, sales and clerical staff and persons in bargaining units for which any trade union held bargaining rights as of August 21, 1995" (121 employees in unit) (*Having regard to the agreement of the parties*)

**2417-95-R:** International Union of Bricklayers and Allied Craftsmen, Local 10 (Kingston) (Applicant) v. Van Londen Masonry Ltd. (Respondent)

Unit: "all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of Van Londen Masonry Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of Van Londen Masonry Ltd. in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2423-95-R:** United Steelworkers of America (Applicant) v. Versatech Canada Ltd. (Respondent)

Unit: "all employees of Versatech Canada Ltd. at its Versatech Industries Division in the Municipality of Metropolitan Toronto, including agency workers, save and except Assistant Manager, persons above the rank of Assistant Manager, and office, clerical and sales staff" (138 employees in unit) (*Having regard to the agreement of the parties*)

**2480-95-R:** Ontario Nurses' Association (Applicant) v. Community Life Care Inc. c.o.b. as Community Nursing Home, Port Perry (Respondent)

Unit: "all employees employed as Activity Aides, Registered Practical Nurses, Health Care Aides and Nursing Assistants by Community Life Care Inc. c.o.b. as Community Nursing Home, Port Perry in the Township of Scugog, save and except Supervisors, persons above the rank of Supervisor and persons for whom any trade union held bargaining rights as of September 28, 1995" (36 employees in unit) (*Having regard to the agreement of the parties*)

**2499-95-R:** International Association of Heat and Frost Insulators and Asbestos Workers Local 95 (Applicant) v. Inseal Contracting Inc. (Respondent)

Unit: "all journeymen and apprentice insulators in the employ of Inseal Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journey-

men and apprentice insulators in the employ of Inseal Contracting Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**2536-95-R:** The Ontario Pipe Trade Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 663 (Applicant) v. Markson Construction Services Inc. (Respondent)

Unit: "all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Markson Construction Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and steamfitters and steamfitters apprentices in the employ of Markson Construction Services Inc. in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**2548-95-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 800 (Applicant) v. Rhucon Pipeline Construction Ltd. (Respondent)

Unit: "all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices, in the employ of Rhucon Pipeline Construction Ltd. in within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**2589-95-R:** Canadian Union of Public Employees (Applicant) v. Senior People's Resources in North Toronto Inc. (Respondent)

Unit: "all employees of Senior People's Resources in North Toronto Inc. in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor and Secretary to the Executive Director" (61 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2597-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Consbec Inc. (Respondent)

Unit: "all employees of Consbec Inc. engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in all sectors of the construction industry within a radius of fifty-seven (57) kilometres, (approximately thirty-five (35) miles) of the City of Sudbury Federal Building (Board Area 17), excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working foreperson and persons above the rank of non-working foreperson" (4 employees in unit)

**2628-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Dundee Contracting Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices, in the employ of Dundee Contracting Inc. in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**2721-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Information Communications Services (ICS) Inc. at its Alltour Marketing Services Division (Respondent)



Unit: “all employees of Information Communications Services (ICS) Inc. at its Alltour Marketing Services Division in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and students employed during the school vacation period” (82 employees in unit) (*Having regard to the agreement of the parties*)

### **Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**1976-95-R:** Queen’s University Faculty Association (Applicant) v. Queen’s University at Kingston (Respondent) v. Thomas Harris and others (Intervener)

Unit: “all persons employed as members of the academic staff of Queen’s University at Kingston, in the province of Ontario, including: (1) persons who hold an appointment to the academic staff with Tenure, as defined by the University’s Regulations Governing Appointment, Renewal of Appointment, Tenure and Termination for Academic Staff; (2) persons who hold a renewed, renewable, non-renewable or replacement appointment with academic rank, as defined by the University’s Regulations Governing Appointment, Renewal of Appointment, Tenure and Termination for Academic Staff; (3) special appointees who hold an appointment with academic rank and carry responsibility for a full range of academic duties, as defined in the University’s Regulations Governing Appointment, Renewal of Appointment, Tenure and Termination for Academic Staff and Statement on Special Appointees; (4) Group II and Group III adjunct appointees who are members of the University’s adjunct academic staff, as defined by the University’s Statement on Adjunct Academic Staff and Academic Assistants; (5) persons who hold initial, renewed, continuing or contractually limited term appointments as librarians, as defined by the University’s Terms of Employment for Librarians; and (6) persons who hold appointments from the Principal as archivists with the University Archives; save and except: (a) full voting members of the Board of Trustees; (b) Associate Deans and those persons at or above the level of Associate Deans, including the Principal and Vice-Chancellor, Vice-Principals, Associate Vice-Principals, Deans, Vice-Deans, and anyone who is appointed to act in those positions; (c) the Chief Librarian, the Association Librarian, the Personnel Librarian, the Assistant Librarian (Systems and Development), and the Coordinator of Technical Services (Library System); (d) the University Archivist; (e) physicians with or without academic rank to whom the Ontario Medical Association Dues Act, 1991 applies; (f) persons who meet the definition of Group I adjunct appointees, as defined by the University’s Statement on Adjunct Academic Staff and Academic Assistants, unless they are also employed by the University as librarians, archivists, or members of the University’s regular academic staff, as defined by the Statement on Adjunct Academic Staff and Academic Assistants; (g) Emeritus Professors; (h) persons, including visiting fellows, who are on leave from another university, institution, firm, or government agency, unless: (i) they hold an appointment with academic rank at Queen’s University at Kingston, (ii) carry a full range of academic responsibilities as Queen’s University at Kingston, and (iii) are on leave without salary from their home university, institution, firm or government agency; (i) secondees to the Faculty of Education; (j) post-doctoral fellows and research fellows, unless they hold an appointment with academic rank and carry a full range of academic responsibilities, or are Group II or Group III adjunct appointees, or are employed by the University as librarians or archivists; (k) academic assistants, as defined by the University’s Statement on Adjunct Academic Staff and Academic Assistants; (l) students, including teaching fellows, who are registered in a degree program at the University, unless they hold an appointment with academic rank or are employed by the University as librarians or archivists; (m) persons employed in the Student Counselling Service; (n) persons whose appointments are exclusively for work outside of the province of Ontario, including persons teaching at Herstmonceux Castle; (o) the Executive Director and Resident (Academic) Director of the International Study Centre at Herstmonceux Castle; (p) secondees to positions providing confidential assistance to the Principal or a Vice-Principal; and (q) secondees for a term of not less than one year to an administrative non-academic position, so long as it is the secondee’s principal responsibility.” (850 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters’ list	924
Number of persons who cast ballots	755
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	419
Number of ballots marked against applicant	311
Number of ballots segregated and not counted	25



**2255-95-R:** Independent Paperworkers of Canada (Applicant) v. Kimberly-Clark, Inc. (Respondent) v. IWA - Canada (Intervener)

Unit: "all employees of Kimberly-Clark Inc., City of Etobicoke, save and except supervisors, temporary supervisors and office staff" (111 employees in unit)

Number of names of persons on revised voters' list	121
Number of persons who cast ballots	88
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	88
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	67
Number of ballots marked in favour of intervener	20

### **Bargaining Agents Certified Subsequent to a Post-Hearing Vote**

**1674-95-R:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. Corporation of the City of Thunder Bay (Respondent) v. Canadian Union of Public Employees and its Local 87 (Intervener)

Unit: "all employees of Corporation of the City of Thunder Bay regularly employed for not more than 24 hours per week and students employed during the school vacation period at Chapples Golf Course, 530 Chapples Drive and Strathcona Golf Course, 500 Hodder Avenue in the City of Thunder Bay and the Municipal Gold Course at RR#2 in the Township of Paipoonge, save and except Supervisors, persons above the rank of Supervisor and persons in bargaining units for which any trade union held bargaining rights as of July 26, 1995" (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2

**2206-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. Windsor Regional Hospital (Respondent) v. Canadian Union of Operating Engineers and General Workers, Service Employees' Union, Local 210, (Interveners)

Unit: "all stationary engineers, firemen, apprentices and helpers employed by Windsor Regional Hospital in its power house at Windsor, save and except the Assistant Director of Plant and Engineering and persons above the rank of Assistant Director of Plant and Engineering and further, all carpenters and painters and maintenance personnel below the rank of supervisor; and further, maintenance personnel will include all personnel within the department save and except the groundskeeper and landscaper" (15 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

**2207-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. Chatham Public General Hospital (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: “all stationary engineers (not including maintenance men) of Chatham Public General Hospital in the City of Chatham” (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	1

**2208-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. Windsor Regional Hospital (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: “the following employees of Windsor Regional Hospital: all engineers, firemen and their apprentices and helpers employed by the Essex Health Association, operating The Essex County Sanatorium, I.O.D.E. Memorial Hospital and Community Psychiatric Hospital, Windsor, Ontario save and except Chief Engineer, and all engineers, firemen and their apprentices and helpers employed by Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) in any of its operations save and except Chief Engineer and further all electricians and plumbers” (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	11

**2209-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. Hotel-Dieu Grace Hospital (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: “all engineers, mechanics, bio-medical technicians, electrical and electronic technicians, refrigeration mechanics, dialysis technicians, apprentices and helpers of Hotel-Dieu Grace Hospital in the City of Windsor” (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

**2210-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. 3M Canada Inc. (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: “all employees in the power house of 3M Canada Inc. in London, Ontario excluding the Chief Engineer” (7 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

**2212-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. St. Joseph's Health Centre of Sarnia (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: "all stationary engineers and persons engaged as helpers employed in the boiler room at St. Joseph's Health Centre of Sarnia in the City of Sarnia, save and except Engineering Supervisor and persons regularly employed for not more than 24 hours per week" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots marked in favour of applicant	3

**2369-95-R:** Canadian Union of Public Employees (Applicant) v. West Parry Sound Health Centre (Respondent) v. Service Employees Union, Local 478 (Intervener)

Unit: "all office and clerical employees of West Parry Sound Health Centre, James Street Site, in the Town of Parry Sound, employed for not more than 24 hours per week, save and except Managers, persons above the rank of Manager, Secretary to the Administrator, Secretary to the Assistant Administrator, Secretary to the Director of Nursing, Secretary to the Director of Personnel, Human Resources staff, the Administration Office Clerk and Accounting Supervisor, Food Services Supervisors, the Staffing Officer, Department Heads and persons for whom any trade union held bargaining rights as of September 20, 1995" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	6
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

**2505-95-R:** Ontario Public Service Employees Union (Applicant) v. Tri-Town & District Association for Community Living (Respondent)

Unit: "all employees of Tri-Town & District Association for Community Living in the District of Timiskaming, save and except Supervisors, persons above the rank of Supervisor, Administrative Assistant and Supervisor/General Administration" (51 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	36
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	13

### **Applications for Certification Dismissed Without Vote**

**0833-94-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. Fortran Iron Works Ltd. (Respondent)

**0801-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 634 (Applicant) v. The Corporation of the City of Sudbury (Respondent)

**1875-95-R:** United Food and Commercial Workers International Union (Applicant) v. Oshawa Group Limited (Respondent)

**1977-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. S & R Car Rentals Toronto (Central) Ltd. (Respondent)

**2438-95-R:** Canadian Union of Public Employees (Applicant) v. Doug Roe Enterprises Ltd. c.o.b. Mid Ontario Disposal (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)



**2504-95-R:** United Food and Commercial Workers International Union, AFL, CIO, CLC (Applicant) v. 570466 Ontario Ltd., c.o.b. as Niagara Poultry Services (Respondent)

**3057-95-R:** Service Employees's Union, Local 210 (Applicant) v. Trillium Court (Respondent)

**3133-95-R:** Ontario Nurses' Association (Applicant) v. Canadian Red Cross Society Mortheastern Ontario Region (Respondent)

**3134-95-R:** Ontario Nurses' Association (Applicant) v. Victoria Nursing Home (Respondent)

### **Applications for Certification Dismissed Subsequent to a Pre-Hearing Vote**

**2326-95-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Traxle Mfg. Ltd. (Respondent)

Unit #1: "all employees of Traxle Mfg. Ltd. in the City of Guelph, save and except supervisors, persons above the rank of supervisor, Engineering Department, office and clerical staff" (172 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	175
Number of persons who cast ballots	163
Number of ballots marked in favour of applicant	49
Number of ballots marked against applicant	114

**2563-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Peel Plastic Products Limited (Respondent)

Unit #1: "all employees of Peel Plastic Products Limited in the City of Brampton, save and except supervisors, persons above the rank of supervisor, office and sales staff" (70 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	72
Number of persons who cast ballots	72
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	59
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	47
Number of ballots segregated and not counted	13

### **Applications for Certification Dismissed Subsequent to a Post-Hearing Vote**

**0795-95-R:** Labourers' International Union of North America, Local 1267 (Applicant) v. Amcan Castings Limited, Burlington Division (Respondent)

Unit: "all employees of Amcan Castings Limited, Burlington Division, in the City of Burlington, save and except forepersons, persons above the rank of foreperson, office and clerical staff" (114 employees in unit)

Number of names of persons on revised voters' list	141
Number of persons who cast ballots	131
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	122
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	94
Number of ballots segregated and not counted	9

**1166-95-R:** International Union of Bricklayers & Allied Craftsmen, Local 12 (Applicant) v. Emonts Masonry Construction Limited (Respondent) v. Group of Employees (Objectors)

Unit: “all journeymen and apprentice bricklayers in the employ of Emonts Masonry Construction Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice bricklayers in the employ of Emonts Masonry Construction Limited in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the County of Grey, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

**1296-95-R:** United Steelworkers of America (Applicant) v. Blue Line Transportation Ltd. c.o.b. as Blue Line Taxi, et al. (Respondent)

Unit: “all dependent contractors engaged by the responding parties operating as taxi drivers in the City of Hamilton, save and except supervisors, persons above the rank of supervisor, dispatchers, call-takers, garage and maintenance staff, office and clerical staff and multi-car, multi-plate owners and/or lessees” (390 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	446
Number of persons who cast ballots	349
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	268
Number of segregated ballots cast by persons whose names appear on voter's list	59
Number of segregated ballots cast by persons whose names do not appear on voters' list	22
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	49
Number of ballots marked against applicant	218
Number of ballots segregated and not counted	81

**2045-95-R:** United Steelworkers of America (Applicant) v. Alcan Aluminium Limited (Respondent) v. International Union, United Plant Guard Workers of America, Local 1962 (Intervener)

Unit: “all Security Patrolmen employed by Alcan Aluminium Limited in its Alcan Rolled Products Company Division in the City of Kingston, save and except Security Supervisors and persons above the rank of Security Supervisor” (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots marked in favour of applicant	6
Number of ballots marked in favour of intervener	6

**2211-95-R:** The Canadian Power Engineers and Skilled Trades Union (Applicant) v. St. Joseph's Health Services Association of Chatham Incorporated operating as St. Joseph's Hospital (Respondent) v. Canadian Union of Operating Engineers and General Workers (Intervener)

Unit: “all stationary engineers and plumbers of St. Joseph's Health Services Association of Chatham Incorporated operating as St. Joseph's Hospital in the City of Chatham, save and except Director of Engineers Services and Supervisor of Engineers Services” (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
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Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked in favour of intervener	2
Number of ballots segregated and not counted	0

**2264-95-R:** Teamsters Local Union No. 879 (Applicant) v. Mainstream Transportation Services Inc. (Respondent)

Unit: "all employees of Mainstream Transportation Services Inc. in the City of Kitchener, save and except dispatchers and supervisors, persons above the rank of dispatcher and supervisor, office and sales staff" (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	4

**2590-95-R:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Cooper Plating Inc. (Respondent)

Unit: "all employees of Cooper Plating Inc. in the Town of Markham, save and except Managers, persons above the rank of Manager, office, clerical and sales staff and chemists" (35 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	38
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	31
Number of ballots segregated and not counted	3

### Applications for Certification Withdrawn

**4580-94-R:** Construction Workers Local 6 affiliated with the Christian Labour Association of Canada (Applicant) v. 694643 Ontario Limited c.o.b. as O'Connor Electric (Respondent)

**0437-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Eldom Drywall (Respondent) v. Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Intervener)

**0800-95-R:** International Brotherhood of Painters and Allied Trades, and Local Union 1819 (Glaziers) (Applicant) v. Marksall Signs Inc. (Respondent)

**0963-95-R:** Canadian Union of Public Employees (Applicant) v. The Metropolitan Toronto Housing Authority (Respondent) v. Ontario Public Service Employees Union, United Steelworkers of America (Interveners)



**1195-95-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Visa Construction Limited (Respondent)

**1488-95-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. B.M. Welding and Fabrication (Respondent)

**2221-95-R:** International Alliance of Theatrical Stage Employees (IATSE) Local 580 (Applicant) v. City of Windsor for the Chrysler Theatre (Respondent)

**2241-95-R; 2242-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. S & R Car and Truck Rentals Ltd. Toronto (Central) (Respondent)

**2278-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 58, Toronto (Applicant) v. Crocodile Labour Services Inc. (Respondent) v. Group of Employees (Objectors)

**2470-95-R:** United Steelworkers of America (Applicant) v. LensCrafters Limited (Respondent)

**2577-95-R:** International Brotherhood of Painters and Allied Trades (Applicant) v. Foremont Drywall Inc. (Respondent)

**2623-95-R:** Laundry, Linen Drivers and Industrial Workers Union Local 847 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Eastgate Towing Inc. (Respondent)

**2635-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Servicemaster of Chatham (Respondent)

**2716-95-R:** International Brotherhood of Painters and Allied Trades (Applicant) v. Scott Lath Plaster & Acoustics Drywall (Respondent)

**2739-95-R:** Laundry & Linen Drivers and Industrial Workers Union Local 847 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Markham Woodbine Hospitality Limited c.o.b. as Chimo Hotels (Respondent)

**2745-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Ogden Allied Services Inc. (Respondent)

**2776-95-R:** International Brotherhood of Painters and Allied Trades - Local Union 1832 (Applicant) v. Peterborough Interiors Ltd. (Respondent)

**2788-95-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Strasser Construction Limited and/or S & A Developments and/or Strasser & Hunt Construction Limited (Respondent)

**2937-95-R:** United Steelworkers of America (Applicant) v. Canada Investment Castings, Inc. (Respondent)

**2996-95-R:** Teamsters Local Union No. 419 (Applicant) v. Pinkerton's of Canada Limited (Respondent)

## **APPLICATION FOR COMBINATION OF BARGAINING UNITS**

**0576-94-R:** Canadian Union of Public Employees and its Local 229 (Applicant) v. Marriott Management Services at Queen's University (Respondent) (*Granted*)

**3409-94-R:** Hillside Townhouses Limited c.o.b. as The Victoria Inn, Thunder Bay (Applicant) v. The Hospitality, Commercial and Service Employees Union of Canada (Respondent) v. Hospitality, Commercial and

Service Employees Union, Local 73 chartered by Hotel Employees and Restaurant Employees International Union and Hotel Employees and Restaurant Employees International Union (Intervener) (*Terminated*)

**4682-94-R:** Ontario Public Service Employees' Union (Applicant) v. Children's Aid Societies listed on Schedule A, Children's Aid Society of York Region, Family and Children's Services of Brockville, Leeds and Grenville, Children's Aid Society of London and Middlesex, North Cochrane District Family Services, Children's Aid Society of Ottawa-Carleton, Prescott-Russell Children's Aid Society, Children's Aid Society of the Districts of Sudbury and Manitoulin, The Children's Aid Society of the Regional Municipality of Waterloo, Children's Aid Society of the County of Kent, Kawartha-Haliburton Children's Aid Society, Family and Children's Services of Renfrew County, Children's Aid Society of the County of Perth, Children's Aid Society of Northumberland, Children's Aid Society of the District of Parry Sound, Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry, The Children's Aid Society for the District of Temiskaming (Respondents) (*Withdrawn*)

**0151-95-R:** Ontario Nurses' Association (Applicant) v. Brant County Board of Health (Respondent) (*Terminated*)

**0896-95-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Domclean Ltd. (Respondent) (*Withdrawn*)

**1398-95-R:** Local 429 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Metropolitan Stores of Canada Limited (Respondent) (*Withdrawn*)

**1399-95-R:** Local 582 of the Retail, Wholesale and Department Store Union District Council of the United Food & Commercial Workers International Union (Applicant) v. Work Wear Corporation of Canada Ltd. (Respondent) (*Withdrawn*)

**1481-95-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. The Trustees of the Cleary Auditorium (Respondent) (*Withdrawn*)

**1617-95-R:** United Food and Commercial Workers International Local 175 (Applicant) v. Caressant Care Nursing Home of Canada Ltd. operating as Caressant Care Nursing Home, Listowel (Respondent) (*Withdrawn*)

**1679-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 173 (Applicant) v. Cineplex Odeon Corporation (Respondent) (*Granted*)

**1681-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 173 (Applicant) v. Famous Players Inc. (Respondent) (*Granted*)

**1683-95-R:** United Food and Commercial Workers International Local 175 (Applicant) v. Journey's End Management Inc., Choice Hotels Canada Inc., 496458 Ontario Limited (c.o.b.) as Journey's End Number Four Partnership, 412238 Ontario Limited, 447965 Ontario Limited, as General Partner for Journey's End Number Three Partnership, and 537670 Ontario Limited (Respondents) (*Withdrawn*)

**2047-95-R; 2048-95-R:** Ontario Public Service Employees Union (Applicant) v. Palmerston and District Hospital (Respondent) (*Granted*)

**2231-95-R:** The Canadian Union of Public Employees, Local 1219 (Applicant) v. The Corporation of the Town of Markham (Respondent) (*Withdrawn*)

**2303-95-R:** United Food and Commercial Workers International Union (Applicant) v. Oshawa Group Limited (Respondent) (*Withdrawn*)

**2450-95-R:** Ontario Public Service Employees Union (Applicant) v. Cochrane Temiskaming Resource Centre (Respondent) (*Granted*)

**2535-95-R:** Ontario Public Service Employees Union (Applicant) v. The Corporation of the Town of Gravenhurst (Respondent) (*Withdrawn*)

**2929-95-R:** Ontario Public Service Employees Union (Applicant) v. Alcoholism & Drug Addiction Research Foundation (Respondent) (*Terminated*)

**3165-95-R:** United Paperworkers International Union (Applicant) v. Birchwood Terrace Home for the Aged (Respondent) (*Dismissed*)

## **FIRST AGREEMENT - DIRECTION**

**2971-95-FC:** Canadian Union of Public Employees and its Local 207 (Applicant) v. The Valley East Public Library Board (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**2017-94-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Derby Terrazzo Tile Co. Limited, Derby Terrazzo & Tile Co., Derbtile Construction Inc. and Derbtile Construction (Respondents) (*Withdrawn*)

**4220-94-R:** Communications, Energy and Paperworkers' Union of Canada and its Local 99 (Applicant) v. Grant Forest Products Corp., Grant Development Corporation, Temiskaming Crane and Equipment Rentals, and Wabi Development Corporation (Respondents) v. International Brotherhood of Electrical Workers, Local Union 1687 (Intervener) (*Withdrawn*)

**0219-95-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Leslie & Palmer Company Limited and/or Leslie & Palmer Company (1994) Ltd. (Respondents) (*Endorsed Settlement*)

**4681-94-R:** Ontario Public Service Employees' Union (Applicant) v. Children's Aid Societies listed on Schedule A (Respondent) (*Withdrawn*)

**0383-95-R:** International Brotherhood of Painters and Allied Trades, Local 1904 (Applicant) v. Nickel Belt Aluminum of Sudbury Limited and B"N"T Glass Ltd. (Respondents) (*Granted*)

**1272-95-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. J.T. Young Power Contractors Inc. and J.T. Young Construction & Investments Ltd. (Respondents) (*Endorsed Settlement*)

**1421-95-R:** Teamsters Local Union No. 879 (Applicant) v. Uniflo Sewer Services Inc. Uniflo Pipeliners Canada Inc., Uniflo Underwater Utilities Management Corporation (Respondents) (*Withdrawn*)

**1632-95-R:** International Union of Bricklayers Allied Craftsmen, Local 7 - Canada (Applicant) v. J. McBride and Sons Limited, The McBride Group Inc., 686758 Ontario Limited c.o.b. as Colonial Building Restoration (Respondents) (*Withdrawn*)

**2010-95-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Trafalgar Distribution Services (a division of 820990 Ontario Inc.) and Petro Canada (Respondents) (*Withdrawn*)

**2054-95-R:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. A. C. & I. Services Ltd. and A. C. & I. Environmental (Respondent) (*Withdrawn*)

**2137-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Journey's End Management Inc., Choice Hotels Canada Inc., 496458 Ontario Limited (c.o.b.) as Journey's End Num-



ber Four Partnership, 412238 Ontario Limited, 447965 Ontario Limited, as General Partner for Journey's End Number Three Partnership, and 537670 Ontario Limited (Respondents) (*Withdrawn*)

**2291-95-R:** National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada) and its Local 89 (Applicant) v. SKD - The Amherstburg Division of SKD Company A Partnership of NMC Canada Inc. and The Continental Group of Canada Inc. and National Lamination Company, a Division of National Material L.P. and National Material L.P. (Respondents) (*Withdrawn*)

**2707-95-R:** The Amalgamated Transit Union (Applicant) v. The Miller Group, Miller Paving Limited, Miller Transit Limited (Respondent) (*Withdrawn*)

**2990-95-R:** Labourers International Union of North America (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America; Canadian Union of Shinglers and Allied Workers; Metropolitan Toronto Shinglers Association c.o.b. as Canadian Shinglers Association Canadian Shinglers Association, Robert Shewell, Harold Biso, Steven Wolfreys (Respondents) (*Dismissed*)

## SALE OF A BUSINESS

**4220-94-R:** Communications, Energy and Paperworkers' Union of Canada and its Local 99 (Applicant) v. Grant Forest Products Corp., Grant Development Corporation, Temiskaming Crane and Equipment Rentals, and, Wabi Development Corporation (Respondents) v. International Brotherhood of Electrical Workers, Local Union 1687 (Intervener) (*Withdrawn*)

**0219-95-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Leslie & Palmer Company Limited and/or Leslie & Palmer Company (1994) Ltd. (Respondents) (*Endorsed Settlement*)

**0247-95-R:** Canadian Union of Public Employees (Local 139) (Applicant) v. North Bay General Hospital (Respondent) v. Service Employees International Union, L. 478 (Intervener) (*Granted*)

**0383-95-R:** International Brotherhood of Painters and Allied Trades, Local 1904 (Applicant) v. Nickel Belt Aluminum of Sudbury Limited and B"N"T Glass Ltd. (Respondents) (*Granted*)

**1272-95-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. J.T. Young Power Contractors Inc. and J.T. Young Construction & Investments Ltd. (Respondents) (*Endorsed Settlement*)

**1632-95-R:** International Union of Bricklayers Allied Craftsmen, Local 7 - Canada (Applicant) v. J. McBride and Sons Limited, The McBride Group Inc., 686758 Ontario Limited c.o.b. as Colonial Building Restoration (Respondents) (*Withdrawn*)

**1749-95-R:** United Steelworkers of America (Applicant) v. Polaris Fireplaces (Respondent) (*Endorsed Settlement*)

**1931-95-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (Applicant) v. Windsor Ready Mix, Dunhill Contracting Limited, Trican Materials Limited, Concrete & Aggregate Equipment Limited (Respondents) (*Terminated*)

**2010-95-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Trafalgar Distribution Services (a division of 820990 Ontario Inc.) and Petro Canada (Respondents) (*Withdrawn*)

**2054-95-R:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. A. C. & I. Services Ltd. and A. C. & I. Environmental (Respondent) (*Withdrawn*)

**2293-95-R:** National Automobile, Aerospace, Transportation and General workers Union (CAW-Canada) and its Local 89 (Applicant) v. SKD - The Amherstburg Division of SKD Company A Partnership of NMC Canada Inc. and The Continental Group of Canada Inc. and National Lamination Company, a Division of National Material L.P. and National Material L.P. (Respondents) (*Withdrawn*)

**2990-95-R:** Labourers International Union of North America (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America; Canadian Union of Shinglers and Allied Workers; Metropolitan Toronto Shinglers Association c.o.b. as Canadian Shinglers Association Canadian Shinglers Association, Robert Shewell, Harold Biso, Steven Wolfreys (Respondents) (*Dismissed*)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**2421-95-R:** Laundry & Linen Drivers and Industrial Workers, Local 847 affiliated with International Brotherhood of Teamsters AFL-CIO (Applicant) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351-A (Respondent) v. Metropolitan Toronto Convention Centre Corporation (Intervener) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**4541-94-R:** Robert Pearce (Applicant) v. International Brotherhood of Electrical Workers Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687, 1739 and International Brotherhood of Electrical Workers Construction Council of Ontario (Respondent) v. 694643 Ontario Limited c.o.b. as O'Connor Electric (Intervener) (*Withdrawn*)

**0419-95-R:** Bill Giroux (Applicant) v. The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, the Windsor Local 1684 (Respondent) (*Withdrawn*)

**0996-95-R:** Ram Seenanan, on his behalf and on behalf of a group of employees of Metro Taxi Ltd. c.o.b. as Capital Taxi, operating as taxi owners and/or taxi drivers (Applicant) v. United Steelworkers of America (Respondent) v. Metro Taxi Ltd. c.o.b. as Capital Taxi (Intervener)

Unit: "all employees of Metro Taxi Ltd. c.o.b. as Capital Taxi operating as taxi owners and/or taxi drivers in the Cities of Ottawa, Vanier and Gloucester, save and except supervisors, dispatchers, telephone staff, multi car/multi plate owners, persons above the rank of supervisor and office and clerical staff" (140 employees in unit) (*Dismissed*)

**1383-95-R:** Paul Dinel (Applicant) v. The International Union of Operating Engineers, Local 793 (Respondent) v. Grant Paving & Materials Limited (Intervener) (*Withdrawn*)

**2050-95-R:** Susan DeMedeiros and Effie Damianakos (Applicants) v. Transportation Communications Union (Respondent) v. Canadian Travel Advisors Ltd. (Intervener)

Unit: "all employees of Canadian Travel Advisors Ltd., in Metropolitan Toronto, save and except Supervisors, those above the rank of Supervisor, Sales Representatives, Product and Creative Co-ordinators, Executive Secretary, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (22 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	15
Number of ballots marked against respondent	5
Number of ballots segregated and not counted	

**2200-95-R:** Chris Veldhuis (Applicant) v. United Food & Commercial Workers International Union, Local 1000A (Respondent) v. Bavarian Meat Products Limited (Intervener)

Unit: "all employees of Bavarian Meat Products Limited in the City of North Bay, Ontario save and except forepersons, persons above the rank of foreperson, head cashier, office and clerical employees and outside sales persons" (10 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	9

**2507-95-R:** Office and Technical Employees of the Town of Midland (Applicant) v. Ontario Public Service Employees Union Local 328 (Respondent) v. Corporation of the Town of Midland (Intervener)

Unit: "all office, clerical and technical employees of the Town of Midland in the Town of Midland, save and except Confidential Secretaries to Department Heads, supervisory staff, student employees as herein defined, occasional employees as herein defined, the position of Chief Building Official and persons covered by subsisting collective agreements" (14 employees in unit) (*Dismissed*)

**2627-95-R:** Micheal Calthorpe and Scott McLean (Applicant) v. Teamsters Local Union 91 (Respondent) v. Anchor Concrete Products Limited (Intervener)

Unit: "all employees of Anchor Concrete Products Limited in the Corporation of the Township of Kingston, save and except foremen, persons above the rank of foreman, clerical, office and sales staff" (24 employees in unit) (*Withdrawn*)

**2769-95-R:** Mark Labriola (Applicant) v. Union of Needletrades, Industrial and Textile Employees (Respondent) (*Granted*)

**2777-95-R:** Rodney Courvoisier and Paul Lobsinger (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Weston Bakeries Limited (Intervener) (*Granted*)

**2815-95-R:** Mark Campbell (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Weston Bakeries Limited (Intervener) (*Granted*)

**2978-95-R:** Gerald Desloges (Applicant) v. Labourers' International Union of North America, Local 493 (Respondent) (*Dismissed*)

**3038-95-R:** Corey Johnson and the Employees of Huron Alloys (Applicant) v. United Steelworkers of America (Respondent) (*Granted*)

## REFERRAL FROM MINISTER

**2610-95-M:** International Union of Operating Engineers, Local 793 (Applicant) v. Laidlaw Environmental Services Ltd. (Respondent) (*Dismissed*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

**2017-95-U:** St. Lawrence Cement Inc. o/a Dufferin Aggregates Inc. (Applicant) v. Communications, Energy & Paperworkers Union of Canada, C.L.C., and its Local 266 (Respondent) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**3123-95-U:** Doef's Ironworks Ltd. (Applicant) v. International Association of Bridge, Structural and Orna-



mental Ironworkers, Local 721, Aaron Murphy, Glenn McCuaig, David Navarro, Michel R. Taylor, Doug Stoehr and George Lawson (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

**2919-95-U:** National Basketball Referees Association (Applicant) v. National Basketball Association (Respondent) (*Granted*)

## APPLICATIONS CONCERNING REPLACEMENT WORKERS

**2837-95-U:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. B.C.I. Broneff Contracting Inc. (Respondent) (*Terminated*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**3383-93-U:** Canadian Union of Public Employees - Local 87 (Inside Unit) (Applicant) v. The Corporation of The City of Thunder Bay (Respondent) (*Dismissed*)

**0600-94-U:** St. Thomas Typographical Union No. 459 of the Printing, Publishing and Media Workers Sector of the Communications Workers of America (Applicant) v. St. Thomas Times-Journal and A Bowes Publishers Limited Newspaper (Respondents) (*Withdrawn*)

**1569-94-U:** Jozsef Fancsali (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Respondent) (*Withdrawn*)

**2645-94-U:** United Steelworkers of America (Applicant) v. Citicom Inc. (Respondent) (*Withdrawn*)

**4546-94-U:** Crane Rental Association of Ontario on its own behalf and on behalf of each individual member including but not limited to those listed in Appendix A attached and Associated Earthmovers of Ontario on its own behalf and on behalf of each individual member (Applicants) v. Operating Engineers' Employer Bargaining Agent (Respondent) v. Sarnia Construction Association (Intervener) (*Withdrawn*)

**0016-95-U:** Terrence Ross (Applicant) v. International Brotherhood of Teamsters, Local Union 938 (Respondent) (*Granted*)

**0371-95-U:** Ontario Public Service Employees Union (OPSEU) (Applicant) v. The Crown in the Right of Ontario (Ministry of Consumer and Commercial Relations) (Respondent) v. Ministry of Labour (Intervener) (*Withdrawn*)

**0903-95-U:** Susan B. Crilly (Applicant) v. Ontario Nurses' Association (Respondent) (*Withdrawn*)

**0911-95-U:** Roland Parisee (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) (*Dismissed*)

**1226-95-U:** Dr. Amrit L. Punhani (Applicant) v. The Society of Ontario Hydro Professional and Administrative Employees (Respondent) v. Ontario Hydro (Intervener) (*Withdrawn*)

**1267-95-U:** United Steelworkers of America (Applicant) v. The Brick Warehouse Corporation (Respondent) (*Withdrawn*)

**1384-95-U:** Paul Dinell, Ivan Peddie, J.P. Rivest, J.P. Gagne, Claude Plamondon, Alain Arsenault, Michel Laplante Yvan Denis, Robert Coles, Etienne Gelineau, Brian MacPherson, Richard Dussault, Carole Caron, Pauline Archambault, Jean Guy Cardinal, Luc Lavigne, Ron Cowan and Ron Taylor (Applicant) v. The International Union of Operating Engineers, Local 793 (Respondent) v. Grant Paving & Materials Limited (Intervener) (*Withdrawn*)

**1426-95-U:** Communications, Energy and Paperworkers Union of Canada, Local 87-M, Southern Ontario Newspaper Guild (Applicant) v. Chatham Daily News, a division of Thompson Newspapers Limited (Respondent) (*Withdrawn*)

**1710-95-U:** United Steelworkers of America (Applicant) v. Greenberg Stores Limited (Respondent) (*Granted*)

**1711-95-U:** Canadian Union of Public Employees, Local 2193 (Applicant) v. Children's Aid Society of Oxford County (Respondent) (*Withdrawn*)

**1761-95-U:** Association of Allied Health Professionals: Ontario (Applicant) v. Peel & Halton Community Access Services Inc. (Respondent) (*Withdrawn*)

**1884-95-U:** Christopher I. Gaebel (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Local 504) (Respondent) v. Camco Inc. (Intervener) (*Dismissed*)

**1932-95-U:** Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (Applicant) v. Windsor Ready Mix Inc., Concrete & Aggregate Equipment Limited (Respondents) (*Terminated*)

**1936-95-U:** Aluminum, Brick and Glass Workers International Union, AFL-CIO-CLC (Applicant) v. Law Cranberry Resort Limited (Respondent) (*Withdrawn*)

**2024-95-U:** United Food and Commercial Workers International Union AFL; CIO; CLC, Local 1000A (Applicant) v. Bavarian Meat Products Limited and 965349 Ontario Limited, c.o.b. as Bavarian Meats (Retail) (Respondent) (*Withdrawn*)

**2074-95-U:** The Royal Conservatory of Music Faculty Association (Applicant) v. The Royal Conservatory of Music (Respondent) (*Withdrawn*)

**2084-95-U:** Ontario Public Service Employees Union (Applicant) v. Peel Living (Respondent) (*Withdrawn*)

**2116-95-U:** Labourers' International Union of North America, Local 527 (Applicant) v. Les Industries Rol Mfg. (Canada) Ltee/Ltd. (Respondent) (*Withdrawn*)

**2123-95-U:** Matteo Caruso (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada CAW TCA Local 514 (Respondent) (*Dismissed*)

**2136-95-U:** United Steelworkers of America (Applicant) v. Sears Canada Inc. (Respondent) (*Terminated*)

**2181-95-U:** United Steelworkers of America (Applicant) v. ASM Dispensaries Limited c.o.b. as Shoppers Drug Mart (Respondent) v. Group of Employees (Objectors) (*Granted*)

**2195-95-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Atlantic Packaging Products Ltd. (Respondent) (*Withdrawn*)

**2225-95-U:** Mike Novic (Applicant) v. Metropolitan Toronto Civic Employees' Union Local 43 (Respondent) (*Dismissed*)

**2292-95-U:** National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada) and its Local 89 (Applicant) v. SKD - The Amherstburg Division of SKD Company A Partnership of NMC Canada Inc. and The Continental Group of Canada Inc. and National Lamination Company, a Division of National Material L.P. and National Material L.P. (Respondents) (*Withdrawn*)

**2304-95-U:** Aluminum, Brick & Glass Workers International Union, AFL-CIO-CLC (Applicant) v. Law Cranberry Resort Limited (Respondent) (*Terminated*)

- 2318-95-U:** The Ontario Public Service Employees Union (OPSEU) (Applicant) v. Oaklands Regional Centre (Respondent) (*Withdrawn*)
- 2356-95-U:** Susan Sisson (Applicant) v. Canadian Union of Public Employees and its Local 1022 (Respondent) (*Withdrawn*)
- 2357-95-U:** Ontario Public Service Employees Union (Applicant) v. The Corporation of the Town of Midland (Respondent) (*Dismissed*)
- 2439-95-U:** International Union of Operating Engineers Local 793 (Applicant) v. The Corporation of the Town of New Tecumseh (Respondent) (*Withdrawn*)
- 2500-95-U:** Canadian Union of Public Employees (Applicant) v. Victorian Order of Nurses - Algoma Branch (Respondent) (*Withdrawn*)
- 2514-95-U:** William Edward Semple (Applicant) v. American Federation of Grain Millers, Local 242 (Respondent) v. Culinar Foods Inc. (Intervener) (*Withdrawn*)
- 2544-95-U:** Daniel N. Lafreniere (Applicant) v. Ontario Liquor Boards Employees' Union, and Liquor Control Board of Ontario (Respondents) (*Withdrawn*)
- 2553-95-U:** Vincenzo Benincasa, et al (Applicant) v. Canada Safeway Limited (Respondent) (*Terminated*)
- 2561-95-U:** Chris Fidler (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) (*Withdrawn*)
- 2607-95-U:** Ontario Public Service Employees Union (Applicant) v. Canwood Inc. c.o.b. as Phoenix I and Phoenix II (Respondent) (*Withdrawn*)
- 2619-95-U:** Pandil Dimitrievski (Applicant) v. United Food and Commercial Workers International Union, Local 743 and Quality Meat Packers Ltd. (Respondents) (*Dismissed*)
- 2636-95-U:** Magdalena Balagtas (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Withdrawn*)
- 2677-95-U:** Anthony Rao (Applicant) v. Cerminara Boys Residence Inc. (Respondent) (*Terminated*)
- 2688-95-U:** Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Omico Mechanical Limited (Respondent) (*Endorsed Settlement*)
- 2696-95-U:** Local 582 of the Retail, Wholesale & Department Store Union, District Council of the United Food & Commercial Workers International Union (Applicant) v. 426979 Ontario Limited, c.o.b. Pino's I.G.A. (Respondent) (*Withdrawn*)
- 2699-95-U:** London and District Service Workers' Union, Local 220 (Applicant) v. Kitchener-Waterloo Habilitation Services (Respondent) (*Withdrawn*)
- 2709-95-U:** United Steelworkers of America (Applicant) v. Metro Taxi Ltd. c.o.b. as Capital Taxi (Respondent) (*Terminated*)
- 2713-95-U:** National Automobile Aerospace Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1995 (Applicant) v. Reynolds-Lemmerz Industries (Respondent) (*Withdrawn*)
- 2722-95-U:** Murray Lehman (Applicant) v. United Steelworkers of America Local 7135 (Respondent) (*Withdrawn*)



**2724-95-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Touram Inc. (Respondent) (*Terminated*)

**2744-95-U:** Labourers International Union of North America, Local 183 (Applicant) v. Ogden Allied Services Inc. (Respondent) (*Withdrawn*)

**2746-95-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 40 (Applicant) v. Gentry Knitting Mills Ltd. and Jan Berkovic (Respondent) (*Withdrawn*)

**2823-95-U:** Gary Andre Cooper (Applicant) v. Canadian Auto Workers Union, Local 1661 (Respondent) v. PPG Canada Inc. (Intervener) (*Withdrawn*)

**2834-95-U:** The Amalgamated Transit Union (Applicant) v. The Miller Group, Miller Paving Limited, Miller Transit Limited (Respondent) (*Withdrawn*)

**2842-95-U:** United Steelworkers of America (Applicant) v. Tisdelle Enterprises Limited c.o.b. as Tim Hortons Donuts (Respondent) (*Withdrawn*)

**2853-95-U:** Getahun Negash (Applicant) v. Lockl - 75 and Delta-Chelsea-Inn (Respondents) (*Dismissed*)

**2918-95-U:** United Food and Commercial Workers International Union (Applicant) v. Sandra Tea and Coffee Limited (Mississauga Location) (Respondent) (*Withdrawn*)

**2930-95-U:** R. Evan Thompson (Applicant) v. Hotel, Motel and Restaurant Employees Union, Local 442 (Respondent) (*Withdrawn*)

**2938-95-U:** Service Employees International Union, Local 478 (Applicant) v. North Bay General Hospital (Respondent) (*Withdrawn*)

**2947-95-U:** Mrs. Zsuzsanna Schell (Applicant) v. Coro Canada Incorporated (Respondent) (*Dismissed*)

**2952-95-U:** Michael John Robert Kotyluk (Applicant) v. United Steelworkers of America Local 6500 (Respondent) (*Dismissed*)

**2953-95-U:** United Steelworkers of America (Applicant) v. Greenberg Stores Limited (Respondent) (*Withdrawn*)

**2959-95-U:** Ontario Public Service Employees Union, Locals 469 and 474 (Applicant) v. Hotel Dieu Hospital - Cornwall (Respondent) (*Withdrawn*)

**3022-95-U; 3023-95-U:** Ontario Public Service Employees Union (Applicant) v. Cerminara Boys Residence Incorporated (Respondent) (*Withdrawn*)

**3076-95-U:** Babak (Bob) Rafizadeh (Applicant) v. Loblaws (Supercentre) (Respondent) (*Dismissed*)

**3105-95-U:** International Union, United Automobile, Aerospace and Agricultural Implement Workers of Local 251 (Applicant) v. Midwest Waltham Abrasives Company (Respondent) (*Dismissed*)

**3113-95-U:** Leonard Charles Davis (Applicant) v. International Brotherhood of Teamster's Local 879 and Carmar Ent. Inc. (Respondents) (*Withdrawn*)

## APPLICATION FOR INTERIM ORDER

**2754-95-M:** London and District Service Workers' Union, Local 220 (Applicant) v. Oxford Child & Youth Centre (Respondent) (*Dismissed*)

**2939-95-M:** Labourers International Union of North America, Local 183 (Applicant) v. Bestway Maintenance (Respondent) (*Granted*)

**2957-95-M:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dominion Sheet Metal and Roofing Works, Chislett Asphalt Roofing Corporation, Labourers' International Union of North America Labourers' International Union of North America, Local 183 (Respondents) (*Dismissed*)

**3021-95-M:** Ontario Public Service Employees Union (Applicant) v. Cerminara Boys Residence Incorporated (Respondent) (*Withdrawn*)

## APPLICATIONS FOR RELIGIOUS EXEMPTION

**3117-95-M:** Raymond Knipping (Applicant) v. Fasco Motors (Respondent) (*Dismissed*)

## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**2846-95-M:** The Textile Rental Institute of Ontario - Hospital Laundries (Applicant) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Respondent) (*Granted*)

**2847-95-M:** The Textile Rental Institute of Ontario - (Part Time Employees) (Applicant) v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees, International Union, Local 351 (Respondent) (*Granted*)

## FINANCIAL STATEMENT

**1759-95-M:** Ann-Marie McDermott (Applicant) v. Ontario Public Service Employees Union Local 597 (Respondent) (*Withdrawn*)

## JURISDICTIONAL DISPUTES

**0243-94-JD:** The Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 598 (Applicant) v. Labourers' International Union of North America, Local 1059 and Dafoe Floor Concrete Construction Ltd. (Respondents) (*Granted*)

**1453-95-JD:** Iron Workers District Council of Ontario International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Applicant) v. State Group Limited, Sheet Metal Workers' International Association, Local 504, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**1766-94-M:** United Steelworkers of America (Applicant) v. John Crane Canada Inc. (Respondent) (*Withdrawn*)

**3941-94-M:** Ontario Public Service Employees' Union (Applicant) v. The Dufferin County Board of Education (Respondent) (*Granted*)

**0032-95-M:** Jewish Federation of Greater Toronto (Applicant) v. Canadian Union of Public Employees (Respondent) (*Withdrawn*)

**1781-95-M:** The Corporation of the County of Elgin (Applicant) v. The Ontario Nurses' Association (Respondent) (*Withdrawn*)

## **COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT**

**3797-93-OH:** Raymond Bartholomew (Applicant) v. Quebecor Printing Inc. (Respondent) (*Withdrawn*)

**0559-95-OH:** Rudolf F. Papp (Applicant) v. Chedoke McMaster Hospitals (Respondent) (*Dismissed*)

**2042-95-OH:** Anthony Buttaro (Applicant) v. Dofasco Inc. (Respondent) (*Withdrawn*)

**2355-95-OH:** Russell Sturgess (Applicant) v. Custom Rads also known as CRM Technology (Respondent) (*Withdrawn*)

**2381-95-OH:** Victor Ruzicic (Applicant) v. Imperial Oil Limited, Products and Chemicals Division (Respondent) (*Dismissed*)

**2550-95-OH:** Hassan Nahli (Applicant) v. ORLICK Industries Limited (Respondent) (*Withdrawn*)

**2595-95-OH:** Dolf J. Roelofsen (Applicant) v. Arnott Construction, Murray Kerr, Bob Brown and Al Lowe (Respondent) (*Withdrawn*)

**2715-95-OH:** Angela McGee (Applicant) v. Penny Baird (Respondent) (*Withdrawn*)

**2741-95-OH:** Jan Kaweck (Applicant) v. Suntown Co. Limited (Respondent) (*Withdrawn*)

**2770-95-OH:** Winston Forrest (Applicant) v. Coleman Container (Respondent) (*Withdrawn*)

**2926-95-OH:** Mr. Guy Ernst (Applicant) v. Trenton Industries Ltd., Trenton Machine Tool Inc. (Respondents) (*Withdrawn*)

## **HOSPITAL LABOUR DISPUTES ARBITRATION ACT (Unfair Labour Practice)**

**2287-95-U:** Portal Village Retirement Home (Applicant) v. Niagara Health Care and Service Workers Union Local 302 affiliated with Christian Labour Association of Canada (Respondent) (*Granted*)

**2444-95-U:** Service Employees International Union, Local 532 (Applicant) v. Meadowcroft Holdings Inc., c.o.b. as Execu-Care Nursing Services, 5M Management Services Limited, and Meadowcroft Limited Partnership, c.o.b. as Meadowcroft Place (Guelph) (Respondents) (*Granted*)

## **CROWN EMPLOYEES COLLECTIVE BARGAINING ACT**

**1420-95-M:** The Crown in Right of Ontario (Applicant) v. Ontario Public Service Employees Union (Institutional and Health Care Bargaining Unit) (Respondent) (*Granted*)

## **CONSTRUCTION INDUSTRY GRIEVANCES**

**2018-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Derby Terrazzo Tile Co. Limited, Derby Terrazzo & Tile Co., Derbtile Construction Inc. and Derbtile Construction (Respondents) (*Withdrawn*)

**2835-94-G:** The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Eastgate Plumbing (Respondent) (*Endorsed Settlement*)



**2957-94-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Toronto Dominion Bank (Respondent) (*Granted*)

**0511-95-G:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. A. C. & I. Services Ltd. (Respondent) (*Withdrawn*)

**0772-95-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Norstar Mechanical Ltd. (Respondent) (*Endorsed Settlement*)

**0791-95-G:** International Union of Bricklayers and Allied Craftsmen, Local 28 Ontario (Applicant) v. Base Construction Inc., Provincial Masonry Inc., and 1025213 Ontario Inc. o/a Provincial Masonry (Respondents) (*Endorsed Settlement*)

**0981-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Keele Carpentry Ltd. (Respondent) (*Granted*)

**1022-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Cambrian Construction & Masonry Co. (Respondent) (*Withdrawn*)

**1024-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Tiger Masonry Contractors Ltd. (Respondent) (*Withdrawn*)

**1026-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 1 (Applicant) v. C-Cor Masonry (Respondent) (*Withdrawn*)

**1027-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Vinmond Construction Inc. (Respondent) (*Withdrawn*)

**1030-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Dominion Masonry Systems Inc. (Respondent) (*Withdrawn*)

**1038-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Plasterworks (Respondent) (*Withdrawn*)

**1042-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 7 (Applicant) v. Bellai Bros. Ltd. (Respondent) (*Withdrawn*)

**1043-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. CMC Carrier Mausoleum Construction Inc. (Respondent) (*Withdrawn*)

**1045-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Albula Construction Inc. (Respondent) (*Withdrawn*)

**1046-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 7 (Applicant) v. Tricon Masonry Limited (Respondent) (*Withdrawn*)

**1047-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Twin Masonry Limited (Respondent) (*Withdrawn*)

**1055-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Gemma Masonry Inc. (Respondent) (*Withdrawn*)

**1058-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Randin Inc. (Respondent) (*Withdrawn*)

**1062-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Limen Masonry Limited (Respondent) (*Withdrawn*)

**1063-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Linar Masonry Inc. (Respondent) (*Withdrawn*)

**1239-95-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Raymond Steel Ltd. (Respondent) (*Withdrawn*)

**1402-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 1 (Applicant) v. George & Asmusen Limited (Respondent) (*Withdrawn*)

**1435-95-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bradscot Construction Limited (Respondent) (*Granted*)

**1455-95-G:** United Brotherhood of Carpenters and Joiners of America Local 785 (Applicant) v. Roots Canada Ltd. (Respondent) (*Endorsed Settlement*)

**1814-95-G:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Root's (Respondent) (*Endorsed Settlement*)

**2305-95-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. New Generation Drywall Ltd. and Marin Contracting Ltd. (Respondents) (*Withdrawn*)

**2306-95-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters, and Joiners of America (Applicant) v. New Generation Drywall Ltd. and Marin Contracting Ltd. (Respondents) (*Granted*)

**2401-95-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Foremount Drywall Inc. (Respondent) (*Endorsed Settlement*)

**2422-95-G:** International Brotherhood of Electrical Workers Local Union 105 (Applicant) v. BGI Systems Integration (Respondent) (*Withdrawn*)

**2454-95-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Internorth Construction Co. Ltd. (Respondent) (*Withdrawn*)

**2531-95-G:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Michelin Group Inc. (Respondent) (*Endorsed Settlement*)

**2613-95-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Giffin Sheet Metals Limited (Respondent) (*Withdrawn*)

**2615-95-G:** International Union of Bricklayers and Allied Craftsmen, Local 7 - Canada (Applicant) v. 90201377 Quebec Inc. c.o.b. as Triple A Masonry (Respondent) (*Endorsed Settlement*)

**2624-95-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Globe Insulation Co. Ltd. (Respondent) (*Endorsed Settlement*)

**2691-95-G:** The International Brotherhood of Painters and Allied Trades and The Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1590 (Applicant) v. Paramount Painting & Decorating (London) Inc. (Respondent) (*Withdrawn*)

**2703-95-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Adesso Construction Limited (Respondent) (*Withdrawn*)

**2728-95-G:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen and International Union of Bricklayers and Allied Craftsmen, Local 29, Ontario (Applicant) v. 970512 Ontario Inc. o/a G & G Masonry (Respondent) (*Granted*)

**2735-95-G:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Venice Masonry Contractors Limited (Respondent) (*Endorsed Settlement*)

**2738-95-G:** International Union of Bricklayers and Allied Craftsmen, Local #1 Ontario (Applicant) v. D.S.L. Masonry Limited (Respondent) (*Endorsed Settlement*)

**2767-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Cooper's Crane Rental Limited (Respondent) (*Withdrawn*)

**2792-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Olympic Star Masonry Ltd. (Respondent) (*Endorsed Settlement*)

**2795-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Norman Star Masonry (Respondent) (*Endorsed Settlement*)

**2812-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. A.C.Z. Contractors Limited (Respondent) (*Granted*)

**2890-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. D. Lafreniere Builders Ltd. (Respondent) (*Endorsed Settlement*)

**2892-95-G:** International Brotherhood of Painters and Allied Trades Local 1891 (Applicant) v. Country Dry-wall Inc. (Respondent) (*Endorsed Settlement*)

**2900-95-G:** Construction Workers Local 53, CLAC (Applicant) v. Competitors General Contracting, 1091050 Ontario Ltd. (Respondent) (*Withdrawn*)

**2902-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Newmarket Crane Service (Respondent) (*Withdrawn*)

**2903-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Friends Masonry Limited (Respondent) (*Withdrawn*)

**2904-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Soares Masonry Inc. (Respondent) (*Endorsed Settlement*)

**2912-95-G:** United Brotherhood of Carpenters and Joiners of America Local 2041 (Applicant) v. Nick Giamberardino & Sons Ltd. (Respondent) (*Endorsed Settlement*)

**2917-95-G:** Labourers' International Union of North America, Local 837 (Applicant) v. Kast Construction Ltd. (Respondent) (*Withdrawn*)

**2921-95-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Elton General Contracting Inc. (Respondent) (*Endorsed Settlement*)

**2955-95-G:** International Brotherhood of Painters and Allied Trades, and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Glaziers Local 1819 (Applicant) v. Service Glass & Mirror Ltd. (Respondent) (*Withdrawn*)

**2960-95-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Enco Air Leakage Services Ltd. o/a Enco Caulking (Respondent) (*Endorsed Settlement*)



**2969-95-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Torchline Group of Companies (Respondent) (*Withdrawn*)

**2970-95-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Printz Contracting Inc. (Respondent) (*Granted*)

**2972-95-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Oshawa Steel Reinforce (Respondent) (*Endorsed Settlement*)

**2975-95-G:** Sheet Metal Workers' International Association, Local 235 (Applicant) v. Riverside Aluminum & Building Ltd. (Respondent) (*Withdrawn*)

**2993-95-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. T.P. Erection Co. Ltd. (Respondent) (*Endorsed Settlement*)

**3003-95-G:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Cablecom International Network Inc. (Respondent) (*Withdrawn*)

**3004-95-G:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Triple A Electric Limited (Respondent) (*Endorsed Settlement*)

**3005-95-G:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Provincial Electrical Contractors (1988) Ltd. (Respondent) (*Withdrawn*)

**3007-95-G:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Milan Electric Ltd. (Respondent) (*Withdrawn*)

**3008-95-G:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Power Plus Electrical Services Inc. (Respondent) (*Withdrawn*)

**3024-95-G:** Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598 (Applicant) v. Blandford Industrial Insulation (Respondent) (*Endorsed Settlement*)

**3036-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Les Structures de Beauce Inc. (Respondent) (*Withdrawn*)

**3060-95-G:** International Brotherhood of Painters and Allied Trades Local Union 205 (Applicant) v. Gatto Painting (Respondent) (*Withdrawn*)

**3078-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Blue Sky Masonry Ltd. (Respondent) (*Endorsed Settlement*)

**3079-95-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Presidentes Masonry (Respondent) (*Withdrawn*)

**3080-95-G:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Metric Masonry Amalgamated Ltd. (Respondent) (*Withdrawn*)

**3086-95-G:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Consoli Dry-wall & Ceiling Systems Limited (Respondent) (*Endorsed Settlement*)

**3092-95-G:** Teamsters Local Union No. 230 affiliated with the International Brotherhood of Teamsters (Applicant) v. Matt Excavating (Respondent) (*Withdrawn*)

**3101-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Bruno's Contracting (Thunder Bay) Limited (Respondent) (*Withdrawn*)

**3108-95-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 833833 Ontario Limited, o/a Murphy Construction (Respondent) (*Endorsed Settlement*)

**3115-95-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Applicant) v. R & B Mechanical Services Inc. (Respondent) (*Endorsed Settlement*)

**3116-95-G:** Construction Workers Local 150 affiliated with the Christian Labour Association of Canada (Applicant) v. St. Catharines Concrete Forming Ltd. (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION**

**0408-93-R; 0410-93-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Grant Paving & Materials Limited (Respondent) (*Withdrawn*)

**3698-93-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. Dingwell's Machinery & Supply Limited (Respondent) (*Denied*)







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ISSN 0383-4778





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# ONTARIO LABOUR RELATIONS BOARD REPORTS

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Ontario

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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

## **Annual Consolidated Index 1995**

**EDITOR: RON LEBI**

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.



Typeset, Printed and Bound by Union Labour in Ontario







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Accreditation - Abandonment - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 ..... (Jan.)

92

Accreditation - Abandonment - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to princi-

ples articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Accreditation - Bargaining Unit - Construction Industry - Practice and Procedure - Residential Low Rise Forming Contractors Association applying for accreditation - Applicant and Local 183 of Labourers' union agreeing on appropriate bargaining unit - Board finding unit appropriate despite objections of Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau - Board setting "employer date" and directing that employers listed on Schedules "E" and "F" receive notice of application and of hearing

RESIDENTIAL LOW RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY, THE; RE LIUNA, LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; TORONTO HOUSING LABOUR BUREAU; ONTARIO FORMWORK ASSOCIATION; RESIDENTIAL FRAMING ASSOCIATION; AND ONTARIO CONCRETE & DRAIN CONTRACTORS ASSOCIATION ..... (Dec.)

1471

Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Membership Evidence - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA ..... (Mar.)

250

Adjournment - Certification - Construction Industry - Practice and Procedure - Board Officer conducting examination into dispute over list and composition of bargaining unit - Counsel seeking adjournment following examination-in chief of witness on ground that he was taken



by surprise by evidence, and asking that Board rule on request - Board explaining importance of Board Officer examination process and observing that Board Officer in best position to rule on requests for adjournments and other procedural matters - Accordingly, as a general proposition, Board will uphold the Officer's procedural directions, absent a compelling reason to do otherwise - Board finding no compelling reason in this case not to confirm Officer's decision directing counsel to commence cross-examination forthwith

DÉSOURDY 1949 PAVING INC.; RE LIUNA, LOCAL 527.....(Jan.)

12

Agricultural Labour Relations Act - Certification - Charges - Membership Evidence - Employer objecting to jurisdiction of the Board on grounds that agricultural industry division allegedly not designated in manner contemplated by Agricultural Labour Relations Act - Objection dismissed - Board also dismissing objection to reliability of membership evidence submitted by union - Certificate issuing

HIGHLINE PRODUCE LIMITED; RE UFCW; RE THERESA SARKIS ..... (June)

803

Arbitration - Crown Employees Collective Bargaining Act - Practice and Procedure - Unfair Labour Practice - Board declining to defer unfair labour practice complaint dealing with abolition of certain positions to Grievance Settlement Board

CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, THE; RE OPSEU ..... (Dec.)

1429

Bargaining Rights - Abandonment - Accreditation - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Bargaining Rights - Abandonment - Accreditation - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing

appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 .....(Jan.) 92

Bargaining Rights - Abandonment - Constitutional Law - Construction Industry - Construction Industry Grievance - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential element of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement

TORONTO DOMINION BANK; CJA, LOCAL 785 ..... (May) 686

Bargaining Rights - Abandonment - Crown Transfer - Judicial Review - Sale of a Business - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed - Employer's application for judicial review dismissed by Divisional Court

HERITAGE GREEN SENIOR CENTRE; RE SEIU, LOCAL 532, OLRB AND ONTARIO MINISTRY OF HEALTH ..... (Sept.) 1236

Bargaining Rights - Abandonment - Related Employer - Remedies - Sale of a Business - Responding parties submitting that related employer applications and sale of business applications made by Ironworkers' union and Operating Engineers' union ought to be dismissed because applicants had abandoned bargaining rights or had delayed in asserting bargaining rights or should be estopped from asserting their bargaining rights - Applications allowed - Board making declaration effective the date that the first application was filed, but exempting any projects which any responding party had contracted to perform but which was not completed prior to that date

PCL CONSTRUCTORS EASTERN INC.; RE BSOIW, LOCAL 765 ..... (Oct.) 1277

Bargaining Rights - Bargaining Unit - Combination of Bargaining Units - Termination - Timeliness - Petition - Practice and Procedure - Three weeks following union's application to combine existing full-time and part-time bargaining units, employee in full-time unit filing application to terminate bargaining rights in that unit - Board finding it appropriate to consider and determine termination application prior to entertaining union's application to combine bargaining units - Board satisfied that signatures on petition in support of termination application representing voluntary wishes of those who signed - Representation vote directed

SUEDON FOODS LTD. C.O.B. AS ELIZABETH STREET I.G.A.; RE UFCW, LOCAL 175 ..... (Feb.) 166

Bargaining Rights - Bargaining Unit - Combination of Bargaining Units - Union applying to combine newly certified maintenance unit with pre-existing unit of drivers and craft unit of

pressmen - Board not accepting employer's submission that section 6(3) of the Act regarding certification of craft units preventing Board from combining craft and non-craft units - Application allowed

WINDSOR STAR, THE, A DIVISION OF SOUTHAM INC.; RE THE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION LOCAL N-1..... (May)

714

Bargaining Rights - Certification - Collective Agreement - Construction Industry - Employer Support - CLAC intervening in certification application brought by IOUE to assert existence of collective agreement between it and employer as bar to application - Board not accepting submission that failure of CLAC to file membership evidence fatal to its ability to discharge onus under section 61 of the Act that it was entitled to represent employees in the bargaining unit at the time that it made collective agreement with employer - Board satisfied that majority vote in favour of accepting proposed collective agreement signifying employees' willingness to have CLAC represent them - Board satisfied that CLAC not receiving employer support such that agreement entered into should not be considered to be collective agreement for purposes of the Act - Application dismissed

GISBORNE DESIGN SERVICES LTD.; RE IUOE, LOCAL 793; RE CLAC ..... (June)

796

Bargaining Rights - Collective Agreement - Sale of a Business - IATSE alleging sale of a business from Ontario Place Corporation (OPC) to MCA Concerts Canada - Board determining that agreement between IATSE and OPC not a collective agreement, and that IATSE and OPC not having collective bargaining relationship - Application dismissed

ONTARIO PLACE CORPORATION AND MCA CONCERTS CANADA; RE IATSE, LOCAL 58..... (June)

840

Bargaining Rights - Constitutional Law - Lock-Out - Strike - Strike Replacement Workers - Trade Union - Unfair Labour Practice - American League and National League of Professional Baseball Clubs locking-out umpires represented by Association of Major League Umpires throughout United States and Canada - Board finding that umpires working in Toronto "employees" within meaning of Labour Relations Act, umpires' organization to be "trade union" within meaning of the Act, and that umpires' organization holding bargaining rights for umpires under Labour Relations Act - Board declaring lock-out of umpires in Ontario unlawful because parties failed to go through compulsory statutory conciliation process - Employment of replacement umpires likewise declared unlawful as contrary to section 73.1 of the Act

THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION..... (Apr.)

540

Bargaining Unit - Accreditation - Construction Industry - Practice and Procedure - Residential Low Rise Forming Contractors Association applying for accreditation - Applicant and Local 183 of Labourers' union agreeing on appropriate bargaining unit - Board finding unit appropriate despite objections of Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau - Board setting "employer date" and directing that employers listed on Schedules "E" and "F" receive notice of application and of hearing

RESIDENTIAL LOW RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY, THE; RE LIUNA, LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; TORONTO HOUSING LABOUR BUREAU; ONTARIO FORMWORK ASSOCIATION; RESIDENTIAL FRAMING ASSOCIATION; AND ONTARIO CONCRETE & DRAIN CONTRACTORS ASSOCIATION ..... (Dec.)

1471



- Bargaining Unit - Bargaining Rights - Combination of Bargaining Units - Termination - Timeliness - Petition - Practice and Procedure - Three weeks following union's application to combine existing full-time and part-time bargaining units, employee in full-time unit filing application to terminate bargaining rights in that unit - Board finding it appropriate to consider and determine termination application prior to entertaining union's application to combine bargaining units - Board satisfied that signatures on petition in support of termination application representing voluntary wishes of those who signed - Representation vote directed
- SUEDON FOODS LTD. C.O.B. AS ELIZABETH STREET I.G.A.; RE UFCW, LOCAL 175 ..... (Feb.) 166
- Bargaining Unit - Bargaining Rights - Combination of Bargaining Units - Union applying to combine newly certified maintenance unit with pre-existing unit of drivers and craft unit of pressmen - Board not accepting employer's submission that section 6(3) of the Act regarding certification of craft units preventing Board from combining craft and non-craft units - Application allowed
- WINDSOR STAR, THE, A DIVISION OF SOUTHAM INC.; RE THE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION LOCAL N-1 ..... (May) 714
- Bargaining Unit - Certification - Biomedical engineers employed by hospital not holding licences to engage in practice of professional engineering pursuant to Professional Engineers Act - Board determining that hospital's biomedical engineers not engineers employed in their professional capacity within meaning of subsection 6(4) of the Act
- OSHAWA GENERAL HOSPITAL; RE OPSEU; RE CUPE AND ITS LOCAL 45 ..... (June) 846
- Bargaining Unit - Certification - Combination of Bargaining Units - OPSTF seeking to represent bargaining unit composed of certain program supervisors and lead instructors employed by school board - OPSTF already representing bargaining unit composed of other lead instructors - OPSTF seeking to combine new bargaining unit with previously certified bargaining unit - Board directing that bargaining units be combined
- BOARD OF EDUCATION FOR THE CITY OF TORONTO, THE; RE OPSTF ... (July) 923
- Bargaining Unit - Certification - Constitutional Law - Board determining that employer's primary business not that of a common carrier, despite holding of common carrier license - Board finding that employer's labour relations falling within provincial jurisdiction - Union applying for certification and proposing bargaining unit composed of drivers and drivers helpers - Employer asserting that bargaining unit should include warehouse personnel - Board determining that unit proposed by union not appropriate
- PEPSI-COLA CANADA LTD.; USWA ..... (Aug.) 1131
- Bargaining Unit - Certification - Crown Employees Collective Bargaining Act - Union applying to represent all waiters/waitresses employed by employer in City of Niagara, which would include 3 of 4 restaurants operated by employer - Employer proposing unit of all waiters/waitresses employed in Regional Municipality of Niagara, which would include all 4 of employer's restaurants - Board finding union's proposed bargaining unit appropriate
- THE NIAGARA PARKS COMMISSION; RE HOTEL, MOTEL AND RESTAURANT EMPLOYEES' UNION, LOCAL 442 ..... (Mar.) 363
- Bargaining Unit - Certification - Employee - Board finding that Discharge Planning Co-ordinator working at public hospital employed in confidential capacity in matters relating to labour relations - Discharge Planning Position excluded from bargaining unit - Final certificate issuing
- NIAGARA-ON-THE-LAKE GENERAL HOSPITAL; RE ONA ..... (Dec.) 1457

- Bargaining Unit - Certification - Employee - Judicial Review - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues - Employer's application for judicial review dismissed
- REYNOLDS-LEMMERZ INDUSTRIES; RE CAW-CANADA, OLRB .....(Jan.) 93
- Bargaining Unit - Certification - Employees - Practice and Procedure - Whether persons employed in disputed classifications should be included in bargaining unit - Employer failing to comply with Board direction to file particulars of its position including details of job functions and basis for employer's request - Board deciding matter based solely on statement of facts filed by union and on parties' oral argument - Board not satisfied that lead hands, line persons and senior deburrers exercising managerial functions within meaning of Act - Facts not supporting submission that lead hands, line persons and senior deburrers not sharing sufficient community of interest with other members of proposed bargaining unit - Final certificate issuing
- REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES .....(Jan.) 59
- Bargaining Unit - Certification - Employer operating 6 retail stores in Metropolitan Toronto - Union applying to represent employees at single location - Employer asserting that only municipality-wide unit appropriate, and that single store unit would create serious labour relations problems because of employer's reliance upon frequent and regular flow of employees from one store to another in order to meet customer requirements - Board finding union's proposed bargaining unit appropriate - Interim certificate issuing
- COLLEGIATE SPORTS EXPERTS, SPORTS EXPERTS INC. C.O.B. MEGA COLLEGIATE SPORTS EXPERTS AND; RE UFCW, LOCAL 175 ..... (Feb.) 96
- Bargaining Unit - Certification - Evidence - Practice and Procedure - Union applying to represent bargaining unit of movie projectionists - Issue arising as to craft status of projectionists - Board determining that licensing requirement under *Theatres Act* determinative of skills component of test that union must meet under section 6(3) of the Act - Union's objection to relevance of further questions about specific skills of projectionists upheld
- NIAGARA FALLS IMAX THEATRE AND/OR NIAGARA FALLS THEATRE VENTURE; RE IATSE, LOCAL 173; RE BERNARD WILLER ..... (Sept.) 1209
- Bargaining Unit - Certification - Judicial Review - Union applying to represent employees of retirement home in Guelph - Employer submitting that bargaining unit should include group of "floating" maintenance and housekeeping workers, who work out of head office and who service some 25 retirement homes owned by employer, when those maintenance employees work at Guelph home - Board determining that maintenance and housekeeping employees who float to different homes should be included in bargaining unit - Certificate issuing - Application for judicial review dismissed by Divisional Court
- MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECUCARE NURSING SERVICES, AND MEADOWCROFT LIMITED PARTNERSHIP C.O.B. AS MEADOWCROFT PLACE (GUELPH); RE SEIU LOCAL 532 AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. AND THE OLRB, THE RIGHT HONOURABLE ELIZABETH WITMER, MINISTER OF LABOUR FOR ONTARIO AND 5M MANAGEMENT SERVICES LTD..... (Oct.) 1353

- Bargaining Unit - Certification - Security Guards - Board finding that bargaining unit consisting solely of casino's surveillance staff constituting appropriate bargaining unit  
WINDSOR CASINO LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA)..... (Feb.) 206
- Bargaining Unit - Certification - Union applying to represent bargaining unit of "ground staff" employed by golf and country club - Employer contending that bargaining unit should include ground staff and clubhouse staff - Board finding union's proposed unit appropriate - Certificate issuing  
FORT WILLIAM GOLF & COUNTRY CLUB LIMITED; RE UFCW, LOCAL 175 ..... (Aug.) 1070
- Bargaining Unit - Certification - Union applying to represent employees of retirement home in Guelph - Employer submitting that bargaining unit should include group of "floating" maintenance and housekeeping workers, who work out of head office and who service some 25 retirement homes owned by employer, when those maintenance employees work at Guelph home - Board determining that maintenance and housekeeping employees who float to different homes should not be included in bargaining unit - Certificate issuing  
MEADOWCROFT PLACE (GUELPH), MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES, 5M MANAGEMENT SERVICES LTD., AND MEADOWCROFT LIMITED PARTNERSHIP C.O.B. AS; RE SEIU, LOCAL 532 AFFILIATED WITH THE A.F. OF L., C.I.O. C.L.C. .... (Mar.) 324
- Bargaining Unit - Certification - Union making timely certification application and seeking to "carve out" about a dozen employees holding two classifications in existing 85 person bargaining unit - Board finding union's proposed bargaining unit not appropriate - Certification application dismissed  
PUBLIC SERVICE ALLIANCE OF CANADA; RE NEGOTIATIONS AND RESEARCH EMPLOYEES UNION; RE ALLIANCE EMPLOYEES' UNION..... (July) 1010
- Bargaining Unit - Combination of Bargaining Units - Board earlier directing that bargaining units be combined, but reserving on effective date of its order where bargaining units in various stages of bargaining and union having commenced strike in one of the units - Board directing that bargaining units be combined forthwith  
ZELLERS INC.; RE UFCW, LOCAL 175 ..... (June) 903
- Bargaining Unit - Combination of Bargaining Units - Board in earlier decision finding that monitoring of other employees by security officers employed by municipality raising real possibility of conflict of interest if security officers included in municipality's full-time bargaining unit - Union now seeking to combine newly certified bargaining unit of security officers with existing full-time bargaining unit - Board not prepared to grant application where statutory preconditions outlined in section 6(6) of the Act are met - Application to combine bargaining units dismissed  
THE MUNICIPALITY OF METROPOLITAN TORONTO; RE CUPE, LOCAL 79..... (Feb.) 182
- Bargaining Unit - Combination of Bargaining Units - Employer applying to combine bargaining units of stationary engineers and maintenance workers - Board not accepting responding party's argument that bargaining units in question represented by separate locals of national union - Board dismissing objection to its jurisdiction to combine the units  
CARLETON UNIVERSITY; RE CUPE ..... (Aug.) 1055
- Bargaining Unit - Combination of Bargaining Units - Remedies - Board earlier combining newly



- certified service technician bargaining unit in Sudbury with pre-existing service technician bargaining unit in southern Ontario - Union and employer agreeing on how to integrate the bargaining units, except for issue of wages - Parties returning to Board for its direction under subsection 7(5) of the Act - Board directing that Sudbury employees receive annual wage increases of 4 percent in 1993 and 1994
- PREMARK CANADA INC.; RE IAM ..... (Mar.) 338
- Bargaining Unit - Combination of Bargaining Units - Remedies - Board in earlier decision directing combination of employer's "parts" and "manufacturing" bargaining units and remaining seized with respect to remedial issues - Employer and union subsequently asking Board to determine unresolved seniority integration issue under section 7(5) of the Act - Board directing that seniority lists be "dovetailed" and that employees of both former "parts" and "manufacturing" bargaining units be credited with seniority from date of hire with the employer
- FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION ..... (Feb.) 115
- Bargaining Unit - Combination of Bargaining Units - Union applying to combine bargaining units of cleaners and maintenance workers - Board not accepting employer's submission that in exercising its discretion under section 7 of the Act, Board ought to take into account changed labour relations environment caused by government's stated intention to revoke Bill 40 - Application allowed
- HAMILTON-WENTWORTH ROMAN CATHOLIC SEPARATE SCHOOL BOARD; RE LIUNA, LOCAL 837..... (Sept.) 1205
- Bargaining Unit - Combination of Bargaining Units - Union applying to combine editorial employees bargaining unit with bargaining unit of part-time mailroom employees - Application allowed
- THE SPECTATOR, A DIVISION OF SOUTHAM INC.; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION, LOCAL 87-M, SOUTHERN ONTARIO NEWSPAPER GUILD ..... (Apr.) 559
- Bargaining Unit - Combination of Bargaining Units - Union seeking to combine 10 retail store bargaining units located throughout province - Bargaining units in various stages of bargaining, with no-board reports having issued in two of the units and the union having commenced a strike in one of the units - Board rejecting employer's submission that Board having no jurisdiction to combine bargaining units where one of units sought to be combined subject of notice to bargain - Board directing that the bargaining units be combined, but reserving on effective date of order - Registrar directed to schedule hearing to receive parties' submissions regarding appropriate date on which order should come into force
- ZELLERS INC.; RE UFCW, LOCAL 175 ..... (Apr.) 568
- Bargaining Unit - Combination of Bargaining Units - Union seeking to combine separate press and mailroom craft bargaining units of newspaper publisher - Employer submitting that craft bargaining units cannot be combined - Board applying *Windsor Star* case and combining the units - Application granted
- METROLAND PRINTING, PUBLISHING & DISTRIBUTING LTD.; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 500M ..... (July) 986
- Bargaining Unit - Sale of a Business - Parties agreeing that merger of North Bay Civic Hospital ("Civic") and St. Joseph's General Hospital ("St. Jo's") to form North Bay General Hospital amounting to sale of a business and that employees intermingled - CUPE representing employees in "all-employee" bargaining unit at the Civic - SEIU representing employees in three bargaining units at St. Jo's - Parties agreeing to determine representation issue on

basis of representation vote, but not agreeing on whether to create one or two bargaining units - Board directing vote in single broadly-based unit

NORTH BAY GENERAL HOSPITAL; RE CUPE (LOCAL 139); RE SEIU, LOCAL 478 .....(Nov.)

1401

Certification - Adjournment - Charges - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Certification - Adjournment - Charges - Employer Support - Evidence - Intimidation and Coercion - Membership Evidence - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA .....(Mar.)

250

Certification - Adjournment - Construction Industry - Practice and Procedure - Board Officer conducting examination into dispute over list and composition of bargaining unit - Counsel seeking adjournment following examination-in chief of witness on ground that he was taken by surprise by evidence, and asking that Board rule on request - Board explaining importance of Board Officer examination process and observing that Board Officer in best position to rule on requests for adjournments and other procedural matters - Accordingly, as a general proposition, Board will uphold the Officer's procedural directions, absent a compelling reason to do otherwise - Board finding no compelling reason in this case not to confirm Officer's decision directing counsel to commence cross-examination forthwith

DÉSOURDY 1949 PAVING INC.; RE LIUNA, LOCAL 527.....(Jan.)

12

Certification - Agricultural Labour Relations Act - Charges - Membership Evidence - Employer objecting to jurisdiction of the Board on grounds that agricultural industry division allegedly not designated in manner contemplated by Agricultural Labour Relations Act - Objection dismissed - Board also dismissing objection to reliability of membership evidence submitted by union - Certificate issuing

HIGHLINE PRODUCE LIMITED; RE UFCW; RE THERESA SARKIS ..... (June)

803

Certification - Bargaining Rights - Collective Agreement - Construction Industry - Employer Sup-

port - CLAC intervening in certification application brought by IOUE to assert existence of collective agreement between it and employer as bar to application - Board not accepting submission that failure of CLAC to file membership evidence fatal to its ability to discharge onus under section 61 of the Act that it was entitled to represent employees in the bargaining unit at the time that it made collective agreement with employer - Board satisfied that majority vote in favour of accepting proposed collective agreement signifying employees' willingness to have CLAC represent them - Board satisfied that CLAC not receiving employer support such that agreement entered into should not be considered to be collective agreement for purposes of the Act - Application dismissed	
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Certification - Bargaining Unit - Employee - Judicial Review - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of <i>res judicata</i> or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of	



Board in order to expedite resolution of bargaining unit configuration issues - Employer's application for judicial review dismissed

REYNOLDS-LEMMERZ INDUSTRIES; RE CAW-CANADA, OLRB ..... (Jan.) 93

Certification - Bargaining Unit - Employees - Practice and Procedure - Whether persons employed in disputed classifications should be included in bargaining unit - Employer failing to comply with Board direction to file particulars of its position including details of job functions and basis for employer's request - Board deciding matter based solely on statement of facts filed by union and on parties' oral argument - Board not satisfied that lead hands, line persons and senior deburrers exercising managerial functions within meaning of Act - Facts not supporting submission that lead hands, line persons and senior deburrers not sharing sufficient community of interest with other members of proposed bargaining unit - Final certificate issuing

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES ..... (Jan.) 59

Certification - Bargaining Unit - Employer operating 6 retail stores in Metropolitan Toronto - Union applying to represent employees at single location - Employer asserting that only municipality-wide unit appropriate, and that single store unit would create serious labour relations problems because of employer's reliance upon frequent and regular flow of employees from one store to another in order to meet customer requirements - Board finding union's proposed bargaining unit appropriate - Interim certificate issuing

COLLEGIATE SPORTS EXPERTS, SPORTS EXPERTS INC. C.O.B. MEGA COLLEGIATE SPORTS EXPERTS AND; RE UFCW, LOCAL 175 ..... (Feb.) 96

Certification - Bargaining Unit - Evidence - Practice and Procedure - Union applying to represent bargaining unit of movie projectionists - Issue arising as to craft status of projectionists - Board determining that licensing requirement under *Theatres Act* determinative of skills component of test that union must meet under section 6(3) of the Act - Union's objection to relevance of further questions about specific skills of projectionists upheld

NIAGARA FALLS IMAX THEATRE AND/OR NIAGARA FALLS THEATRE VENTURE; RE IATSE, LOCAL 173; RE BERNARD WILLER ..... (Sept.) 1209

Certification - Bargaining Unit - Judicial Review - Union applying to represent employees of retirement home in Guelph - Employer submitting that bargaining unit should include group of "floating" maintenance and housekeeping workers, who work out of head office and who service some 25 retirement homes owned by employer, when those maintenance employees work at Guelph home - Board determining that maintenance and housekeeping employees who float to different homes should be included in bargaining unit - Certificate issuing - Application for judicial review dismissed by Divisional Court

MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECUCARE NURSING SERVICES, AND MEADOWCROFT LIMITED PARTNERSHIP C.O.B. AS MEADOWCROFT PLACE (GUELPH); RE SEIU LOCAL 532 AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. AND THE OLRB, THE RIGHT HONOURABLE ELIZABETH WITMER, MINISTER OF LABOUR FOR ONTARIO AND 5M MANAGEMENT SERVICES LTD. .... (Oct.) 1353

Certification - Bargaining Unit - Security Guards - Board finding that bargaining unit consisting solely of casino's surveillance staff constituting appropriate bargaining unit

WINDSOR CASINO LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Feb.) 206

- Certification - Bargaining Unit - Union applying to represent bargaining unit of "ground staff" employed by golf and country club - Employer contending that bargaining unit should include ground staff and clubhouse staff - Board finding union's proposed unit appropriate - Certificate issuing
- FORT WILLIAM GOLF & COUNTRY CLUB LIMITED; RE UFCW, LOCAL 175 .....(Aug.) 1070
- Certification - Bargaining Unit - Union applying to represent employees of retirement home in Guelph - Employer submitting that bargaining unit should include group of "floating" maintenance and housekeeping workers, who work out of head office and who service some 25 retirement homes owned by employer, when those maintenance employees work at Guelph home - Board determining that maintenance and housekeeping employees who float to different homes should not be included in bargaining unit - Certificate issuing
- MEADOWCROFT PLACE (GUELPH), MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES, 5M MANAGEMENT SERVICES LTD., AND MEADOWCROFT LIMITED PARTNERSHIP C.O.B. AS; RE SEIU, LOCAL 532 AFFILIATED WITH THE A.F. OF L., C.I.O. C.L.C. ....(Mar.) 324
- Certification - Bargaining Unit - Union making timely certification application and seeking to "carve out" about a dozen employees holding two classifications in existing 85 person bargaining unit - Board finding union's proposed bargaining unit not appropriate - Certification application dismissed
- PUBLIC SERVICE ALLIANCE OF CANADA; RE NEGOTIATIONS AND RESEARCH EMPLOYEES UNION; RE ALLIANCE EMPLOYEES' UNION .....(July) 1010
- Certification - Board finding that IATSE meeting all three statutory conditions to establish its craft status in respect of projectionists
- NIAGARA FALLS IMAX THEATRE AND/OR NIAGARA FALLS THEATRE VENTURE; RE IATSE, LOCAL 173; RE BERNARD WILLER ..... (Oct.) 1273
- Certification - Certification Where Act Contravened - Constitutional Law - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing
- SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD. C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION .....(Dec.) 1475
- Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Employee - Board finding lead hand, who was primary in-house organizer for union, to be "employee" within meaning of Act - Board determining that lay-offs of three bargaining unit members tainted by anti-union animus - Reinstatement with compensation ordered - Board certifying union under section 9.2 of the Act - Board directing distribution Board notice and directing that union be permitted to convene meeting of employees on company premises during normal working hours
- Z-LITE JENAMEES; RE AMALGAMATED CLOTHING AND TEXTILES WORKERS' UNION, AFL-CIO-CLC..... (Feb.) 212
- Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Remedies - Unfair Labour Practice - Board finding that

employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act

PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.) 505

Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Thunder Bay employer asserting inability to finance conduct of proceedings in Toronto and declining to attend hearing into union's certification application and unfair labour practice complaint - Board explaining its travel policy in respect of "fast-track" cases - On basis of uncontradicted evidence, Board finding employer in violation of Act in discharging key union organizer and known union supporter - Reinstatement ordered - Union certified under section 9.2 of the Act

FRADE'S FRUIT LTD.; RE UFCW, LOCAL 175 ..... (Feb.) 122

Certification - Change in Working Conditions - Employer asserting that various certification applications should be dismissed with a bar on basis of employer theory that union improperly using statutory freeze as organizing tool - Board not persuaded that bar appropriate - Union granted leave to withdraw two of the applications, Board dismissing third application and certificate issuing in respect of fourth application

S & R CAR RENTALS TORONTO (CENTRAL) LTD.; RE UFCW, LOCAL 175 (Nov.) 1410

Certification - Charges - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.) 230

Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Board inquiring into reliability of union's membership evidence following disclosure that employee who had signed union cards as "witness" had not seen employees sign the cards - Board satisfied on the evidence that there was no intention to mislead Board - Board satisfied that employee who had countersigned cards was in position to confirm that the persons had signed the cards and wished to belong to the union - In all the circumstances, Board seeing no reason to reject cards submitted, nor to order representation vote - Board finding that charges of intimidation and coercion in collection of membership evidence not made out - Certificate issuing

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES ..... (Mar.) 290

Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Union moving that Board not inquire into certain employee allegations of undue pressure and misrepresentation during union's organizing drive - Board satisfied that allegations of intimidation amounting to nothing more than persistence, perhaps exaggerated salesmanship, or insensitivity - Board finding no reason to discount membership evidence simply because



employees asked for union cards back and were refused - Board seeing no reason to direct representation vote - Certificate issuing

TIM HORTON DONUTS, MARKET DRIVE DONUTS LTD., C.O.B. AS; RE USWA;  
RE GROUP OF EMPLOYEES ..... (Feb.) 187

Certification - Charges - Fraud - Board declining to inquire into non-sign allegations following withdrawal by union of its certification application - Application dismissed

CFM INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION  
AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA); RE OLSTEN  
SERVICES LIMITED ..... (June) 725

Certification - Charges - Intimidation and Coercion - Membership Evidence - Employer alleging that membership evidence collected through threats to employees' job security by former supervisor at workplace - Board not convinced that former supervisor's encouragement of unionization casting doubt on voluntariness of membership evidence submitted - Certificate issuing

VERSA SERVICES LTD.; RE CAW-CANADA; RE RETAIL WHOLESALE  
CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEEL-  
WORKERS OF AMERICA, LOCAL 414; MILK AND BREAD DRIVERS, DAIRY  
EMPLOYEES CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO.  
647 ..... (Jan.) 79

Certification - Charges - Intimidation and Coercion - Membership Evidence - Employer operating greenhouse near Thunder Bay - Union applying for certification in May when 13 members of bargaining unit employed - Employer asking Board to defer application and to hold representation vote in November at time when 35 to 40 employees to be employed performing seasonal work - Board satisfied that composition of bargaining unit on application date sufficiently representative - Board dismissing allegations of intimidation and coercion in collection of membership evidence - Certificate issuing

HILL'S GREENHOUSE LTD.; RE IWA-CANADA, LOCAL 2693; RE LOUISE  
MYLLYAHO ..... (July) 970

Certification - Constitutional Law - Reconsideration - Employer's business including operation of mustard seed elevators - Employer seeking reconsideration of decision certifying union on ground that labour relations of employer falling in federal jurisdiction - Board not accepting argument that elevators operated by employer equivalent to elevators declared to be works for the general advantage of Canada under *Canada Grain Act* in that they perform similar function and should therefore also be found within federal jurisdiction - Board satisfied that employer's labour relations properly subject to provincial regulation - Reconsideration application dismissed

G.S. DUNN & CO. LIMITED; RE TEAMSTERS LOCAL UNION NO. 879 ..... (Feb.) 128

Certification - Construction Industry - Discharge - Discharge for Union Activity - Evidence - Membership Evidence - Interference in Trade Unions - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no con-

nection between certification application and employee's lay-off - Unfair labour practice complaint dismissed

HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 .....(Mar.) 272

Certification - Construction Industry - Employer - Board finding that responding personnel agencies not the employers of electricians for whom union seeking bargaining rights

DARE PERSONNEL INC.; RE IBEW, LOCAL 586.....(July) 935

Certification - Construction Industry - Evidence - Practice and Procedure - Board confirming authority of Officer to make procedural rulings regarding admissibility of evidence during an examination - Board finding no compelling reason to interfere with Officer's decision to receive certain evidence and, accordingly, declining to do so

DESOURDY PAVING; RE IUOE, LOCAL 793 .....(Apr.) 395

Certification - Construction Industry - Membership Evidence - Petition - Pre-Hearing Vote - CLAC applying to displace Sheet Metal Workers' union as bargaining agent for employer's employees - Board rejecting Sheet Metal's assertion that membership evidence filed by CLAC nullified by subsequent reaffirmations signed by employer's employees - Reaffirmations having no effect on employees' membership in CLAC and, accordingly, having no effect on CLAC's level of membership support - Board also applying *Knob Hill Farms* case in determining that there is no place for change of heart documents in pre-hearing vote proceeding

COVERTITE EASTERN LIMITED; RE CLAC, CONSTRUCTION WORKERS LOCAL 52; RE SMW, LOCAL 47 .....(June) 729

Certification - Construction Industry - Reconsideration - Employer applying for reconsideration and requesting "supplementary reasons" that would "fully canvass" the evidence - Application dismissed - Board not accepting that decision failed to indicate the evidence used to support the Board's findings - Request for further reasons dismissed

BRADSCOT CONSTRUCTION LIMITED, BRADSCOT LIMITED, BRADSCOT MANAGEMENT LIMITED, BRADSCOT NORTHERN LIMITED, BRADSCOT WESTERN LIMITED AND BRADSCOT (MCL) LTD., R.D. PAINTING, AND ALBERTO HENRIQUEZ PAINTING & DECORATING; RE PAT .....(Oct.) 1246

Certification - Construction Industry - Timeliness - Ironworkers' union applying to represent its standard unit of ironworkers and apprentices - Employer submitting that ironworkers and all other employees represented by Machinists' union and that relevant collective agreement making certification application untimely - Board holding that Machinists' collective agreement not covering work in issue and not constituting bar to application - Certificates issuing

DINGWELL'S MACHINERY & SUPPLY LIMITED; RE BSOIW, LOCAL 759...(Aug.) 1058

Certification - Construction Industry - Union applying to represent bargaining unit of journeymen sheet metal workers - Board finding that certain individuals (whose Certificates of Qualification under *Apprenticeship Act* had lapsed for non-payment of fees) to be "journeymen sheet metal workers" and thus employees in the bargaining unit on the certification application date - Board agreeing with, but distinguishing decisions of the Board in *O.J. Pipelines*, *P&M Electric* and *Gorf* - Certificates issuing

N C SHEET METAL, 2714744 CANADA INC. C.O.B.; RE LOCAL UNION 47 SMW .....(Mar.) 333

- Certification - Crown Employees Collective Bargaining Act - Termination - Association of Law Officers of the Crown ("ALOC") applying to represent articling students employed in Ontario Public Service - Board finding that articling students already represented by Ontario Public Service Employees Union (OPSEU) - Certification application dismissed as untimely - Board also dismissing application to terminate OPSEU's bargaining rights in respect of articling students on ground that Act's provisions regarding termination after voluntary recognition not applying to designation of OPSEU as bargaining agent
- CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY MANAGEMENT BOARD OF CABINET, THE; RE ASSOCIATION OF LAW OFFICERS OF THE CROWN; RE AMPCEO, OPSEU.....(Dec.) 1424
- Certification - Employee - Union seeking to represent theatre's stage employees - Board rejecting employer's assertion that stage hands actually independent contractors and not "employees" within meaning of the Act - Certificate issuing
- GRAND THEATRE CENTRE OF SUDBURY, 1085803 ONTARIO LIMITED C.O.B. AS; RE IATSE, LOCAL 634.....(Dec.) 1433
- Certification - Employer operating chicken catching service out of owner's home and employing 25 persons as chicken catchers - Board finding employees to be employed in agriculture - Application dismissed
- NIAGARA POULTRY SERVICES, 570466 ONTARIO LTD., C.O.B. AS; RE UFCW, AFL, CIO, CLC .....(Nov.) 1396
- Certification - Employer Support - Membership Evidence - Petition - Practice and Procedure - Board rejecting submission that Board without jurisdiction to schedule certification case into "fast track" - Board rejecting argument that notice of application ought to have been given to Steelworkers' union - Board rejecting submission that form of membership evidence submitted by union deficient - Board rejecting argument that Form A-4 Declaration Verifying Membership Evidence filed by union defective - Board rejecting bald and unparticularized allegation that membership evidence tainted by involvement in campaign by person perceived to be member of management - Board not permitting objecting employees to file particulars on day of hearing - Board rejecting submission that it should attach significance to anti-union petition signed before union cards signed - Board accepting primacy of membership evidence filed and finding no reason to exercise its discretion to order representation vote - Certificate issuing
- R.J. RALPH AUTOMOTIVE LIMITED; RE COMMUNICATION, ENERGY & PAPERWORKERS UNION OF CANADA (CEP); RE GROUP OF EMPLOYEES.....(June) 851
- Certification - Evidence - Membership Evidence - Board finding that documentary evidence filed by union in form of authorizations for representation not establishing that employees are members or have applied to be members - Certification applications dismissed
- FAMOUS PLAYERS INC.; RE IATSE .....(Apr.) 397
- Certification - Evidence - Membership Evidence - Petition - Practice and Procedure - Union filing new certification application on same date as Board decision granting leave to withdraw earlier application - Employer's request that Board exercise its discretion under section 105(3)(c) of the Act to refuse to entertain new certification application denied - Employer requesting that Board disclose whether any membership cards filed with new application signed by persons who had previously signed anti-union petition and submitting that union should be required to establish voluntariness of signatures on such cards - - Employer



request denied - Board not satisfied that petitions representing voluntary expression of employee wishes - Certificate issuing

A-1 RENT-A-TOOL ONTARIO LTD.; RE USWA; RE GROUP OF EMPLOYEES.....(Jan.) 1

Certification - Evidence - Membership Evidence - Petition - Pre-Hearing Vote - Union applying for certification and requesting pre-hearing vote under section 9 of the Act - Board earlier directing holding of pre-hearing representation vote over objection of employer - Employer submitting that Board without jurisdiction to conduct vote, count ballots or certify union - Board holding that documentary evidence indicating that employee applies for and accepts membership in trade union satisfies membership requirement in section 9 of the Act - Board further holding that, had it been required to decide the matter, documentary evidence in form of application for membership also satisfying requirement in section 9 - Board distinguishing between letter withdrawing support from union and one revoking union membership - Letters withdrawing support cannot have effect of dropping union's level of membership so as to result in ballots cast in pre-hearing vote not being counted - Board directing that ballots be counted forthwith

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP OF EMPLOYEES.....(Mar.) 303

Certification - Evidence - Membership Evidence - Practice and Procedure - Evidence before Board disclosing that individual whose name appeared as "witness" on union's membership evidence did not actually see employees sign their cards - Board dismissing union's motion that it not inquire further into matter as raising no prima facie case of misconduct or irregularity - Board, however, not agreeing that evidence before it making out prima facie case warranting inquiry into Form A-4 filed by union

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES.....(Feb.) 134

Certification - Evidence - Membership Evidence - Pre-Hearing Vote - Board finding that membership evidence stating that employee applying for membership and agreeing to be bound by union's constitution satisfying statutory requirement in section 9 of the Act - Board adopting and applying decision in *Knob Hill Farms* case - Certificate issuing

OTTAWA BOARD OF EDUCATION; RE EDUCATION SUPPORT STAFF ASSOCIATION; RE CUPE, LOCAL 1400.....(May) 663

Certification - Judicial Review - Reconsideration - Representation Vote - Board finding ballot cast in representation vote spoiled where ballot marked with heavy "X" in "No" circle and light oblique line in "Yes" circle - Certificate issuing - Employer applying for reconsideration on ground that spoiled ballots should have been treated as "ballots cast" within meaning of section 9.1 of Act - Issue raised for first time in reconsideration application - Employer offering no reason why argument on ballots cast not raised earlier - Board also noting its established case law to effect that spoiled ballots are not included within "ballots cast" - Reconsideration application dismissed - Employer's application for judicial review dismissed by Divisional Court

MAIDSTONE MANUFACTURING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND OLRB .....(Mar.) 388

Certification - Laid-off employee attending course at employer's expense on application date - Board holding that employee should be included on list of employees for purposes of the count - Board directing representation vote

ORYX FIXTURES INC.; USWA .....(Jan.) 56

Certification - Membership Evidence - Petition - Timeliness - Board finding certain petitions untimely where they were received by Board after date on which certification application was sent by registered mail - Board finding other petition timely where request to transfer petition from earlier withdrawn certification application to new application post-dated new certification application date - Board rejecting argument that membership evidence insufficient on grounds that cards failed to reflect witness to signature, that copy of membership evidence not forwarded to International union as required by union's constitution, that membership applications failed to contain language showing commitment to be bound to union's constitution, and that membership applications were confusing to employees - Board rejecting argument that membership evidence tainted by content of union's correspondence to employees making reference to Labour Relations Board - Board rejecting argument that Form A-4 filed by union unsatisfactory - Interim certificate issuing in respect of one application	
OSHAWA GROUP LIMITED; RE UFCW, AFL-CIO-CLC .....	(Apr.) 477
Certification - Natural Justice - Practice and Procedure - Application date and terminal date falling within period of employer's summer shut-down - Employer posting Form B-4 in workplace as directed but, in view of shut-down, employees not receiving notice of application prior to terminal date - Board rejecting employer's argument that application <i>void ab initio</i> , but directing that terminal date be extended	
OLYMPUS PLASTICS LTD.; RE UAW .....	(Aug.) 1123
Certification - Practice and Procedure - Board scheduling inquiry into non-sign allegation in connection with union's certification application - Union seeking leave to withdraw certification application on eve of hearing, and later that day filing new certification application - Employer opposing withdrawal of first application - Employer seeking to have matter proceed and (given its understanding of union's level of membership support) to have Board direct representation vote - Board dismissing union's first certification application	
DUTCH BOY FOOD MARKETS (WEBER STREET), OSHAWA GROUP LIMITED, C.O.B. AS; RE UFCW .....	(Aug.) 1065
Certification - Pre-Hearing Vote - Board rejecting submission of intervenor in certification application to postpone pre-hearing vote - Board noting that a representation vote should be taken as quickly as is reasonably feasible and practicably convenient for the principal parties, being the applicant trade union and the responding employer	
QUEEN'S UNIVERSITY AT KINGSTON; RE QUEEN'S UNIVERSITY FACULTY ASSOCIATION; RE THOMAS HARRIS AND OTHERS .....	(Sept.) 1213
Certification - Pre-Hearing Vote - Timeliness - Board concluding that Social Contract Act not rendering raiding union's application for certification untimely - Board directing that ballots cast in representation vote be counted	
THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO; RE OPSEU; RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 .....	(Jan.) 71
Certification - Trade Union - Trade Union Status - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing	
KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA; RE EMPLOYEES' ASSOCIATION COMMITTEE OF KUBOTA .....	(Apr.) 467

- Certification Where Act Contravened - Certification - Constitutional Law - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing
- SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD.  
C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION ..... (Dec.) 1475
- Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Employee - Board finding lead hand, who was primary in-house organizer for union, to be "employee" within meaning of Act - Board determining that lay-offs of three bargaining unit members tainted by anti-union animus - Reinstatement with compensation ordered - Board certifying union under section 9.2 of the Act - Board directing distribution Board notice and directing that union be permitted to convene meeting of employees on company premises during normal working hours
- Z-LITE JENAMEES; RE AMALGAMATED CLOTHING AND TEXTILES WORKERS' UNION, AFL-CIO-CLC ..... (Feb.) 212
- Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Interference in Trade Unions - Remedies - Unfair Labour Practice - Board finding that employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act
- PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.) 505
- Certification Where Act Contravened - Certification - Discharge - Discharge for Union Activity - Thunder Bay employer asserting inability to finance conduct of proceedings in Toronto and declining to attend hearing into union's certification application and unfair labour practice complaint - Board explaining its travel policy in respect of "fast-track" cases - On basis of uncontradicted evidence, Board finding employer in violation of Act in discharging key union organizer and known union supporter - Reinstatement ordered - Union certified under section 9.2 of the Act
- FRADE'S FRUIT LTD.; RE UFCW, LOCAL 175 ..... (Feb.) 122
- Change in Working Condition - Unfair Labour Practice - Board finding that certain changes made to employee benefit plans, including splitting of employee group into two pools for purpose of assessing claims experience and premium cost, violating statutory freeze
- THE BRICK WAREHOUSE CORPORATION; RE SEU, LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. .... (Apr.) 545
- Change in Working Conditions - Certification - Employer asserting that various certification applications should be dismissed with a bar on basis of employer theory that union improperly using statutory freeze as organizing tool - Board not persuaded that bar appropriate - Union granted leave to withdraw two of the applications, Board dismissing third application and certificate issuing in respect of fourth application
- S & R CAR RENTALS TORONTO (CENTRAL) LTD.; RE UFCW, LOCAL 175 (Nov.) 1410



Change in Working Conditions - Unfair Labour Practice - Board finding that employer's discontinuation of short term benefits payable to laid off employee contrary to disability plan and violating statutory freeze

PEMBROKE CIVIC HOSPITAL; RE USWA.....(Dec.) 1467

Change in Working Conditions - Unfair Labour Practice - Board rejecting union's claim that "freeze" obliging employer to give certain bargaining unit members 3 per cent wage increase, as result of "promise" allegedly in place when union applied for certification - Application dismissed

THE OTTAWA PUBLIC LIBRARY BOARD; RE THE OTTAWA-CARLETON PUBLIC EMPLOYEES UNION, LOCAL 503.....(Mar.) 376

Charges - Adjournment - Certification - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May) 724

Charges - Adjournment - Certification - Employer Support - Evidence - Intimidation and Coercion - Membership Evidence - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA ..... (Mar.) 250

Charges - Agricultural Labour Relations Act - Certification - Membership Evidence - Employer objecting to jurisdiction of the Board on grounds that agricultural industry division allegedly not designated in manner contemplated by Agricultural Labour Relations Act - Objection dismissed - Board also dismissing objection to reliability of membership evidence submitted by union - Certificate issuing

HIGHLINE PRODUCE LIMITED; RE UFCW; RE THERESA SARKIS ..... (June) 803

Charges - Certification - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to

obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.) 230

Charges - Certification - Evidence - Intimidation and Coercion - Membership Evidence - Board inquiring into reliability of union's membership evidence following disclosure that employee who had signed union cards as "witness" had not seen employees sign the cards - Board satisfied on the evidence that there was no intention to mislead Board - Board satisfied that employee who had countersigned cards was in position to confirm that the persons had signed the cards and wished to belong to the union - In all the circumstances, Board seeing no reason to reject cards submitted, nor to order representation vote - Board finding that charges of intimidation and coercion in collection of membership evidence not made out - Certificate issuing

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES ..... (Mar.) 290

Charges - Certification - Evidence - Intimidation and Coercion - Membership Evidence - Union moving that Board not inquire into certain employee allegations of undue pressure and misrepresentation during union's organizing drive - Board satisfied that allegations of intimidation amounting to nothing more than persistence, perhaps exaggerated salesmanship, or insensitivity - Board finding no reason to discount membership evidence simply because employees asked for union cards back and were refused - Board seeing no reason to direct representation vote - Certificate issuing

TIM HORTON DONUTS, MARKET DRIVE DONUTS LTD., C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES ..... (Feb.) 187

Charges - Certification - Fraud - Board declining to inquire into non-sign allegations following withdrawal by union of its certification application - Application dismissed

CFM INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA); RE OLSTEN SERVICES LIMITED ..... (June) 725

Charges - Certification - Intimidation and Coercion - Membership Evidence - Employer alleging that membership evidence collected through threats to employees' job security by former supervisor at workplace - Board not convinced that former supervisor's encouragement of unionization casting doubt on voluntariness of membership evidence submitted - Certificate issuing

VERSA SERVICES LTD.; RE CAW-CANADA; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 414; MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647 ..... (Jan.) 79

Charges - Certification - Intimidation and Coercion - Membership Evidence - Employer operating greenhouse near Thunder Bay - Union applying for certification in May when 13 members of bargaining unit employed - Employer asking Board to defer application and to hold representation vote in November at time when 35 to 40 employees to be employed performing seasonal work - Board satisfied that composition of bargaining unit on application date suf-

ficiently representative - Board dismissing allegations of intimidation and coercion in collection of membership evidence - Certificate issuing

HILL'S GREENHOUSE LTD.; RE IWA-CANADA, LOCAL 2693; RE LOUISE MYLLYAHU..... (July)

970

Charter of Rights and Freedoms - Constitutional Law - Construction Industry - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg.187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province

ONTARIO CONSTRUCTION SECRETARIAT; RE LIUNA; RE SMW ..... (May)

655

Collective Agreement - Abandonment - Accreditation - Bargaining Rights - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894..... (Jan.)

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Collective Agreement - Abandonment - Accreditation - Bargaining Rights - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Collective Agreement - Bargaining Rights - Certification - Construction Industry - Employer Support - CLAC intervening in certification application brought by IOUE to assert existence of collective agreement between it and employer as bar to application - Board not accepting



submission that failure of CLAC to file membership evidence fatal to its ability to discharge onus under section 61 of the Act that it was entitled to represent employees in the bargaining unit at the time that it made collective agreement with employer - Board satisfied that majority vote in favour of accepting proposed collective agreement signifying employees' willingness to have CLAC represent them - Board satisfied that CLAC not receiving employer support such that agreement entered into should not be considered to be collective agreement for purposes of the Act - Application dismissed

GISBORNE DESIGN SERVICES LTD.; RE IUOE, LOCAL 793; RE CLAC ..... (June) 796

Collective Agreement - Bargaining Rights - Sale of a Business - IATSE alleging sale of a business from Ontario Place Corporation (OPC) to MCA Concerts Canada - Board determining that agreement between IATSE and OPC not a collective agreement, and that IATSE and OPC not having collective bargaining relationship - Application dismissed

ONTARIO PLACE CORPORATION AND MCA CONCERTS CANADA; RE IATSE, LOCAL 58..... (June) 840

Collective Agreement - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Duty to Bargain in Good Faith - Settlement - Trusteeship - Unfair Labour Practice - Carpenters' union Local 675 and Interior Systems Contractors' Association ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA"); RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL 675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND OTHER RELEVANT WORKERS ..... (Aug.) 1082

Collective Agreement - Construction Industry - Members of Carpenters' local in Kingston area giving local union mandate to offer contractors concession to work at 85% of wage rate set out in ICI agreement - Objecting members filing complaint alleging violation of section 148 of the Act - EBAs subsequently authorizing and validating agreements concluded between contractors and local union in Kingston area - Authorization by EBAs effectively amending collective agreement - Complaint dismissed

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249; RE WILLIAM MACDONALD AND EDWARD KENNEDY ..... (Apr.) 565

Collective Agreement - Duty to Bargain in Good Faith - Practice and Procedure - Remedies - Unfair Labour Practice - Union claiming that employer violating its duty to bargain in good faith by refusing to sign collective agreement following vote by employees accepting employer's "final offer" - Employer failing to file response prior to commencement of hearing - Board applying Rule 19 and deeming employer to have accepted all of the facts stated in application - Board deciding case on material before it without necessity of hearing evi-

dence - Application allowed and employer directed to sign collective agreement ratified by bargaining unit	
K & SON MAINTENANCE CO. INC.; RE UFCW, LOCAL 175.....(Aug.)	1121
Combination of Bargaining Units - Bargaining Rights - Bargaining Unit - Union applying to combine newly certified maintenance unit with pre-existing unit of drivers and craft unit of pressmen - Board not accepting employer's submission that section 6(3) of the Act regarding certification of craft units preventing Board from combining craft and non-craft units - Application allowed	
WINDSOR STAR, THE, A DIVISION OF SOUTHAM INC.; RE THE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION LOCAL N-1..... (May)	714
Combination of Bargaining Units - Bargaining Unit - Bargaining Rights - Termination - Timeliness - Petition - Practice and Procedure - Three weeks following union's application to combine existing full-time and part-time bargaining units, employee in full-time unit filing application to terminate bargaining rights in that unit - Board finding it appropriate to consider and determine termination application prior to entertaining union's application to combine bargaining units - Board satisfied that signatures on petition in support of termination application representing voluntary wishes of those who signed - Representation vote directed	
SUEDON FOODS LTD. C.O.B. AS ELIZABETH STREET I.G.A.; RE UFCW, LOCAL 175 ..... (Feb.)	166
Combination of Bargaining Units - Bargaining Unit - Board earlier directing that bargaining units be combined, but reserving on effective date of its order where bargaining units in various stages of bargaining and union having commenced strike in one of the units - Board directing that bargaining units be combined forthwith	
ZELLERS INC.; RE UFCW, LOCAL 175..... (June)	903
Combination of Bargaining Units - Bargaining Unit - Board in earlier decision finding that monitoring of other employees by security officers employed by municipality raising real possibility of conflict of interest if security officers included in municipality's full-time bargaining unit - Union now seeking to combine newly certified bargaining unit of security officers with existing full-time bargaining unit - Board not prepared to grant application where statutory preconditions outlined in section 6(6) of the Act are met - Application to combine bargaining units dismissed	
THE MUNICIPALITY OF METROPOLITAN TORONTO; RE CUPE, LOCAL 79..... (Feb.)	182
Combination of Bargaining Units - Bargaining Unit - Certification - OPSTF seeking to represent bargaining unit composed of certain program supervisors and lead instructors employed by school board - OPSTF already representing bargaining unit composed of other lead instructors - OPSTF seeking to combine new bargaining unit with previously certified bargaining unit - Board directing that bargaining units be combined	
BOARD OF EDUCATION FOR THE CITY OF TORONTO, THE; RE OPSTF ... (July)	923
Combination of Bargaining Units - Bargaining Unit - Employer applying to combine bargaining units of stationary engineers and maintenance workers - Board not accepting responding party's argument that bargaining units in question represented by separate locals of national union - Board dismissing objection to its jurisdiction to combine the units	
CARLETON UNIVERSITY; RE CUPE .....(Aug.)	1055
Combination of Bargaining Units - Bargaining Unit - Remedies - Board earlier combining newly certified service technician bargaining unit in Sudbury with pre-existing service technician bargaining unit in southern Ontario - Union and employer agreeing on how to integrate the	

bargaining units, except for issue of wages - Parties returning to Board for its direction under subsection 7(5) of the Act - Board directing that Sudbury employees receive annual wage increases of 4 percent in 1993 and 1994

PREMARK CANADA INC.; RE IAM.....(Mar.) 338

Combination of Bargaining Units - Bargaining Unit - Remedies - Board in earlier decision directing combination of employer's "parts" and "manufacturing" bargaining units and remaining seized with respect to remedial issues - Employer and union subsequently asking Board to determine unresolved seniority integration issue under section 7(5) of the Act - Board directing that seniority lists be "dovetailed" and that employees of both former "parts" and "manufacturing" bargaining units be credited with seniority from date of hire with the employer

FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION .....(Feb.) 115

Combination of Bargaining Units - Bargaining Unit - Union applying to combine bargaining units of cleaners and maintenance workers - Board not accepting employer's submission that in exercising its discretion under section 7 of the Act, Board ought to take into account changed labour relations environment caused by government's stated intention to revoke Bill 40 - Application allowed

HAMILTON-WENTWORTH ROMAN CATHOLIC SEPARATE SCHOOL BOARD; RE LIUNA, LOCAL 837.....(Sept.) 1205

Combination of Bargaining Units - Bargaining Unit - Union applying to combine editorial employees bargaining unit with bargaining unit of part-time mailroom employees - Application allowed

THE SPECTATOR, A DIVISION OF SOUTHAM INC.; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION, LOCAL 87-M, SOUTHERN ONTARIO NEWSPAPER GUILD .....(Apr.) 559

Combination of Bargaining Units - Bargaining Unit - Union seeking to combine 10 retail store bargaining units located throughout province - Bargaining units in various stages of bargaining, with no-board reports having issued in two of the units and the union having commenced a strike in one of the units - Board rejecting employer's submission that Board having no jurisdiction to combine bargaining units where one of units sought to be combined subject of notice to bargain - Board directing that the bargaining units be combined, but reserving on effective date of order - Registrar directed to schedule hearing to receive parties' submissions regarding appropriate date on which order should come into force

ZELLERS INC.; RE UFCW, LOCAL 175.....(Apr.) 568

Combination of Bargaining Units - Bargaining Unit - Union seeking to combine separate press and mailroom craft bargaining units of newspaper publisher - Employer submitting that craft bargaining units cannot be combined - Board applying *Windsor Star* case and combining the units - Application granted

METROLAND PRINTING, PUBLISHING & DISTRIBUTING LTD.; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 500M .....(July) 986

Consent to Prosecute - Duty of Fair Representation - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Applicant asserting that processing and resolution of policy grievance having negative impact on her and amounting to repudiation of collective agreement - Board noting that Bill 100 not containing duty of fair representation and that Labour Relations Act not applying to teachers - Duty of fair representation complaint dismissed - Applicant also seeking consent to prosecute union for alleged contravention of



Bill 100 provision regarding binding effect of agreements on parties to the collective agreement and on teachers - Application for consent to prosecute dismissed

AIKIA, RITVA; RE O.S.S.T.F. .... (Oct.) 1239

Constitutional Law - Abandonment - Bargaining Rights - Construction Industry - Construction Industry Grievance - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential element of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement

TORONTO DOMINION BANK; CJA, LOCAL 785 ..... (May) 686

Constitutional Law - Bargaining Rights - Lock-Out - Strike - Strike Replacement Workers - Trade Union - Unfair Labour Practice - American League and National League of Professional Baseball Clubs locking-out umpires represented by Association of Major League Umpires throughout United States and Canada - Board finding that umpires working in Toronto "employees" within meaning of Labour Relations Act, umpires' organization to be "trade union" within meaning of the Act, and that umpires' organization holding bargaining rights for umpires under Labour Relations Act - Board declaring lock-out of umpires in Ontario unlawful because parties failed to go through compulsory statutory conciliation process - Employment of replacement umpires likewise declared unlawful as contrary to section 73.1 of the Act

THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION..... (Apr.) 540

Constitutional Law - Bargaining Unit - Certification - Board determining that employer's primary business not that of a common carrier, despite holding of common carrier license - Board finding that employer's labour relations falling within provincial jurisdiction - Union applying for certification and proposing bargaining unit composed of drivers and drivers helpers - Employer asserting that bargaining unit should include warehouse personnel - Board determining that unit proposed by union not appropriate

PEPSI-COLA CANADA LTD.; USWA.....(Aug.) 1131

Constitutional Law - Certification - Certification Where Act Contravened - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing

SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD. C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION ..... (Dec.) 1475

Constitutional Law - Certification - Reconsideration - Employer's business including operation of

mustard seed elevators - Employer seeking reconsideration of decision certifying union on ground that labour relations of employer falling in federal jurisdiction - Board not accepting argument that elevators operated by employer equivalent to elevators declared to be works for the general advantage of Canada under *Canada Grain Act* in that they perform similar function and should therefore also be found within federal jurisdiction - Board satisfied that employer's labour relations properly subject to provincial regulation - Reconsideration application dismissed

G.S. DUNN & CO. LIMITED; RE TEAMSTERS LOCAL UNION NO. 879..... (Feb.) 128

Constitutional Law - Charter of Rights and Freedoms - Construction Industry - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg.187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province

ONTARIO CONSTRUCTION SECRETARIAT; RE LIUNA; RE SMW ..... (May) 655

Constitutional Law - Construction Industry - Jurisdictional Dispute - Labourers' union and Carpenters' union disputing assignment of certain work in respect of construction of bridge across St. Clair River between USA and Canada - Board not accepting Carpenters' submission that construction of bridge in issue falling within federal labour relations jurisdiction - Board declining to disturb assignment of work made to Carpenters

PCL CONSTRUCTION LIMITED, PCL CIVIL CONSTRUCTORS (CANADA) INC., PCL CONSTRUCTORS INC., PCL CONSTRUCTORS EASTERN INC., PCL/MCCARTHY, A JOINT VENTURE, CJA, LOCAL 1256; RE LIUNA, LOCAL 1089.....(Aug.) 1127

Constitutional Law - Interim Relief - Remedies - Employer operating mail sorting operation as part of network of companies providing private mail and courier service through North America - Board finding that employer's labour relations falling within federal jurisdiction - Application for interim relief dismissed

TANAT CANADA, A DIVISION OF G.D. EXPRESS WORLDWIDE CANADA INC.; RE CANADIAN UNION OF POSTAL WORKERS ..... (Apr.) 534

Constitutional Law - Reference - Board not convinced that meal catering an inherent part of operating an airline, nor that federal regulation of catering employees' labour relations essential to federal regulation of aeronautics - Board advising Minister that labour relations between union and airline caterer employer falling within provincial jurisdiction

CATERAIR CHATEAU CANADA LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND IMPLEMENT WORKERS UNION OF CANADA (C.A.W.) AND ITS LOCAL 1990 ..... (May) 633

Constitutional Law - Sale of a Business - Related Employer - Whether labour relations of applicant falling within federal or provincial jurisdiction - Applicant engaged in farm input and grain merchandising business - Board not persuaded that operation of grain elevators, silos, retail store and other operations at particular site sufficiently integrated into operation of feed mill and feed warehouse situated there so as to be subject to federal regulation - Work of employees at other sites not sufficiently integrated with operation of various fed-

eral works situated there to fall within federal jurisdiction - Board concluding that it has constitutional jurisdiction to hear merits of application

LA CO-OPÉRATIVE DE POINTE-AUX-ROCHES, 1015195 ONTARIO LIMITED  
AND CHARLES DESMARAIS; RE UFCW, LOCAL 278W, AND CJA, LOCAL 3054;  
RE UNITED CO-OPERATIVE OF ONTARIO AND UCO PETROLEUM INC.; RE  
GROUP OF EMPLOYEES ..... (Feb.)

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Construction Industry - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 ..... (Jan.)

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Construction Industry - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD  
AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
894 ..... (Dec.)

1506

Construction Industry - Abandonment - Bargaining Rights - Constitutional Law - Construction Industry Grievance - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential element of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but



declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement

TORONTO DOMINION BANK; CJA, LOCAL 785 ..... (May) 686

Construction Industry - Accreditation - Bargaining Unit - Practice and Procedure - Residential Low Rise Forming Contractors Association applying for accreditation - Applicant and Local 183 of Labourers' union agreeing on appropriate bargaining unit - Board finding unit appropriate despite objections of Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau - Board setting "employer date" and directing that employers listed on Schedules "E" and "F" receive notice of application and of hearing

RESIDENTIAL LOW RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY, THE; RE LIUNA, LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; TORONTO HOUSING LABOUR BUREAU; ONTARIO FORMWORK ASSOCIATION; RESIDENTIAL FRAMING ASSOCIATION; AND ONTARIO CONCRETE & DRAIN CONTRACTORS ASSOCIATION ..... (Dec.) 1471

Construction Industry - Adjudgment - Certification - Practice and Procedure - Board Officer conducting examination into dispute over list and composition of bargaining unit - Counsel seeking adjournment following examination-in chief of witness on ground that he was taken by surprise by evidence, and asking that Board rule on request - Board explaining importance of Board Officer examination process and observing that Board Officer in best position to rule on requests for adjournments and other procedural matters - Accordingly, as a general proposition, Board will uphold the Officer's procedural directions, absent a compelling reason to do otherwise - Board finding no compelling reason in this case not to confirm Officer's decision directing counsel to commence cross-examination forthwith

DÉSOURDY 1949 PAVING INC.; RE LIUNA, LOCAL 527..... (Jan.) 12

Construction Industry - Bargaining Rights - Certification - Collective Agreement - Employer Support - CLAC intervening in certification application brought by IOUE to assert existence of collective agreement between it and employer as bar to application - Board not accepting submission that failure of CLAC to file membership evidence fatal to its ability to discharge onus under section 61 of the Act that it was entitled to represent employees in the bargaining unit at the time that it made collective agreement with employer - Board satisfied that majority vote in favour of accepting proposed collective agreement signifying employees' willingness to have CLAC represent them - Board satisfied that CLAC not receiving employer support such that agreement entered into should not be considered to be collective agreement for purposes of the Act - Application dismissed

GISBORNE DESIGN SERVICES LTD.; RE IUOE, LOCAL 793; RE CLAC ..... (June) 796

Construction Industry - Certification - Discharge - Discharge for Union Activity - Evidence - Membership Evidence - Interference in Trade Unions - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no con-

nection between certification application and employee's lay-off - Unfair labour practice complaint dismissed	
HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 .....	(Mar.) 272
Construction Industry - Certification - Employer - Board finding that responding personnel agencies not the employers of electricians for whom union seeking bargaining rights	
DARE PERSONNEL INC.; RE IBEW, LOCAL 586.....	(July) 935
Construction Industry - Certification - Evidence - Practice and Procedure - Board confirming authority of Officer to make procedural rulings regarding admissibility of evidence during an examination - Board finding no compelling reason to interfere with Officer's decision to receive certain evidence and, accordingly, declining to do so	
DESOURDY PAVING; RE IUOE, LOCAL 793 .....	(Apr.) 395
Construction Industry - Certification - Membership Evidence - Petition - Pre-Hearing Vote - CLAC applying to displace Sheet Metal Workers' union as bargaining agent for employer's employees - Board rejecting Sheet Metal's assertion that membership evidence filed by CLAC nullified by subsequent reaffirmations signed by employer's employees - Reaffirmations having no effect on employees' membership in CLAC and, accordingly, having no effect on CLAC's level of membership support - Board also applying <i>Knob Hill Farms</i> case in determining that there is no place for change of heart documents in pre-hearing vote proceeding	
COVERTITE EASTERN LIMITED; RE CLAC, CONSTRUCTION WORKERS LOCAL 52; RE SMW, LOCAL 47 .....	(June) 729
Construction Industry - Certification - Reconsideration - Employer applying for reconsideration and requesting "supplementary reasons" that would "fully canvass" the evidence - Application dismissed - Board not accepting that decision failed to indicate the evidence used to support the Board's findings - Request for further reasons dismissed	
BRADSCOT CONSTRUCTION LIMITED, BRADSCOT LIMITED, BRADSCOT MANAGEMENT LIMITED, BRADSCOT NORTHERN LIMITED, BRADSCOT WESTERN LIMITED AND BRADSCOT (MCL) LTD., R.D. PAINTING, AND ALBERTO HENRIQUEZ PAINTING & DECORATING; RE PAT .....	(Oct.) 1246
Construction Industry - Certification - Timeliness - Ironworkers' union applying to represent its standard unit of ironworkers and apprentices - Employer submitting that ironworkers and all other employees represented by Machinists' union and that relevant collective agreement making certification application untimely - Board holding that Machinists' collective agreement not covering work in issue and not constituting bar to application - Certificates issuing	
DINGWELL'S MACHINERY & SUPPLY LIMITED; RE BSOIW, LOCAL 759....	(Aug.) 1058
Construction Industry - Certification - Union applying to represent bargaining unit of journeymen sheet metal workers - Board finding that certain individuals (whose Certificates of Qualification under <i>Apprenticeship Act</i> had lapsed for non-payment of fees) to be "journeymen sheet metal workers" and thus employees in the bargaining unit on the certification application date - Board agreeing with, but distinguishing decisions of the Board in <i>O.J. Pipelines</i> , <i>P&amp;M Electric</i> and <i>Gorf</i> - Certificates issuing	
N C SHEET METAL, 2714744 CANADA INC. C.O.B.; RE LOCAL UNION 47 SMW .....	(Mar.) 333

Construction Industry - Collective Agreement - Construction Industry Grievance - Duty of Fair Representation - Duty to Bargain in Good Faith - Settlement - Trusteeship - Unfair Labour Practice - Carpenters' union Local 675 and Interior Systems Contractors' Association ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA");  
RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL  
675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR  
DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND  
OTHER RELEVANT WORKERS .....(Aug.)

1082

Construction Industry - Collective Agreement - Members of Carpenters' local in Kingston area giving local union mandate to offer contractors concession to work at 85% of wage rate set out in ICI agreement - Objecting members filing complaint alleging violation of section 148 of the Act - EBAs subsequently authorizing and validating agreements concluded between contractors and local union in Kingston area - Authorization by EBAs effectively amending collective agreement- Complaint dismissed

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL 249; RE WILLIAM MACDONALD AND EDWARD KENNEDY .....(Apr.)

565

Construction Industry - Constitutional Law - Charter of Rights and Freedoms - Ontario Construction Secretariat bringing complaint against Labourers' union and Sheet Metal Workers' union for failure to remit payments to it contrary to section 155 of the Act - Responding unions asserting that section 155 of the Act and O.Reg.187/93 unconstitutional and ought not to be enforced by the Board - Board finding amendment to *Labour Relations Act* and regulation made thereunder creating Ontario Construction Secretariat constitutionally within authority of province

ONTARIO CONSTRUCTION SECRETARIAT; RE LIUNA; RE SMW .....(May)

655

Construction Industry - Constitutional Law - Jurisdictional Dispute - Labourers' union and Carpenters' union disputing assignment of certain work in respect of construction of bridge across St. Clair River between USA and Canada - Board not accepting Carpenters' submission that construction of bridge in issue falling within federal labour relations jurisdiction - Board declining to disturb assignment of work made to Carpenters

PCL CONSTRUCTION LIMITED, PCL CIVIL CONSTRUCTORS (CANADA) INC.,  
PCL CONSTRUCTORS INC., PCL CONSTRUCTORS EASTERN INC.,  
PCL/MCCARTHY, A JOINT VENTURE, CJA, LOCAL 1256; RE LIUNA, LOCAL  
1089.....(Aug.)

1127

Construction Industry - Construction Industry Grievance - Board determining that amounts set out in Provincial Collective Agreement as payable by employers to various benefit funds



are amounts exclusive of retail sales tax - Board allowing grievances alleging that employers failing to remit proper contribution amounts	
TESC CONTRACTING COMPANY LIMITED; RE UA, LOCAL 800..... (July)	1018
Construction Industry - Construction Industry Grievance - Board finding employees of responding party to be construction employees and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement	
DURASYSTEMS BARRIERS INC., DUFFY MECHANICAL CONTRACTORS LIMITED; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30..... (Jan.)	14
Construction Industry - Construction Industry Grievance - Board finding that <i>Social Contract Act</i> applying to UA members performing I.C.I. work for Windsor Board of Education, but that "fail safe provisions" not applying to two employees earning less than \$30,000 annually from public sector employers - Grievance alleging failure to pay compensation increases contained in provincial agreement allowed in part	
BOARD OF EDUCATION FOR THE CITY OF WINDSOR; RE UA, LOCAL 552 ..... (Mar.)	234
Construction Industry - Construction Industry Grievance - Board in previous decision finding that employer bound by provincial agreement, but that union estopped from relying on subcontracting provision of provincial agreement until issuance of that decision - Board not accepting employer's argument that estoppel should apply to contracts entered into after issuance of decision if tendering process commenced prior to Board's decision - Board finding that provincial agreement breached and allowing grievance	
TORONTO DOMINION BANK; RE CJA, LOCAL 2050 ..... (Dec.)	1500
Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Parties - Remedies - Carpenters' union seeking damages in section 126 application, following finding by Board in earlier jurisdictional dispute complaint that its members ought to have been assigned certain work - Board denying Labourers' union standing to participate in hearing of section 126 application - Board applying decision in <i>Sayers &amp; Associates</i> and holding that damages should be restricted to circumstances in which Board concludes that contractor/employer did not act reasonably, not those circumstances in which employer reasonably was wrong - Union not demonstrating that employer acted unreasonably and Board concluding that damages not warranted - Application dismissed	
ROBERTSON YATES CORPORTATION LIMITED; RE CJA, LOCAL UNION 785; RE LIUNA..... (Feb.)	158
Construction Industry - Construction Industry Grievance - Parties - Practice and Procedure - Union grieving alleged improper pay for overtime work - Board exercising its discretion to permit Metropolitan Toronto Road Builders Association ("MTRBA") to intervene in referral of grievance to arbitration so as to avoid multiple proceedings and to bind MTRBA and its members to Board's decision	
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Construction Industry - Construction Industry Grievance - Practice and Procedure - Sale of a Business - Related Employer - Union seeking pre-hearing production order - Board noting recent Divisional Court decision in <i>Goodman v. Rossi</i> and observing that there should be	

implied undertaking by a party to which documents are produced, although perhaps modified to suit its purpose - Responding employer given ten days to reply to union's request

D'LUXE DRYWALL (1987), 737049 ONTARIO LTD. O/A; RE DRYWALL ACOUSTIC LATHING AND INSULATION LOCAL 675 ..... (Feb.) 112

Construction Industry - Discharge - Discharge for Union Activity - Board finding that lay-off of three employees and that certain statements made by foreman violating the Act - Reinstatement with compensation ordered

FAHUKI CONSTRUCTION INCORPORATED; RE BAC, LOCAL 2, TORONTO, BARRIE AND THE ONTARIO PROVINCIAL CONFERENCE OF THE I.U.B.A.C. .... (July) 946

Construction Industry - Duty of Fair Referral - Board finding that local union's operation of hiring hall violating duty of fair referral where collective agreement requiring that number of employer name requests not exceed number of out-of-work list referrals and where employer name requests and self-solicitations together exceeding number of out-of-work list referrals - Local union's reliance on self-solicitation as single most significant fashion in which members referred to work constituting reckless disregard for terms of collective agreement and effectively undermining and subverting balance struck in 50/50 ratio - Application upheld and Board remaining seized with respect to remedy

GRAHAM SMITH, ALLEN OUELLETTE AND CHARLES WILBURN; RE BSOIW, LOCAL 700 ..... (Apr.) 418

Construction Industry - Evidence - Petition - Practice and Procedure - Termination - Termination application brought by husband of employer - Board finding that decision to bring termination application made in consultation with applicant's wife - Board adopting *Hurley Corporation* case and allowing responding party to make motion akin to non-suit motion without being put to its election as to whether or not to call evidence - Evidence not supporting finding of voluntariness - Application dismissed

D & E INSULATION, EVE SIGFRID, CARRYING ON BUSINESS AS; RE DONALD EPP; RE HFIA, LOCAL 95 ..... (June) 748

Construction Industry - Interim Relief - Jurisdictional Dispute - Remedies - Sheet Metal Workers' union and Plumbers' union disputing assignment of certain work involving installation of fan-powered boxes - Sheet Metal Workers seeking interim order restoring original assignment of disputed work - Application for interim order dismissed

NIAGARA MECHANICAL CONTRACTORS, LESLIE BROTHERS INC., UA, LOCAL UNION 666; RE SMW, LOCAL 537 ..... (July) 997

Construction Industry - Interim Relief - Unfair Labour Practice - Remedies - Applicant filing unfair labour practice complaint alleging that Shinglers' union bringing charges against him as result of his participation in other Board proceedings - Applicant in other Board proceedings alleging, amongst other things, that Shinglers' union not a "trade union" within meaning of the Act - Harm to applicant in perception of potential witnesses that applicant being singled out for punishment because of involvement in Board proceeding outweighing harm to union associated with restraint on conduct of internal union affairs - Board directing that internal union trial of applicant be postponed pending outcome of unfair labour practice complaint

BROUWERS, HANK; RE CANADIAN UNION OF SHINGLERS AND ALLIED WORKERS ..... (Sept.) 1160

Construction Industry - Judicial Review - Sector Determination - Board finding construction of underground concrete water storage tank to be work in ICI sector of construction industry, and not in heavy engineering sector or sewer and watermains sector as asserted by Labour-

ers' union - Declaration issuing accordingly - Labourers' application for judicial review dismissed by Divisional Court

MATHEWS CONTRACTING INC., A BANKRUPT AND THE OLRB, CJA, LOCAL 18, COOPERS & LYBRAND LIMITED, TRUSTEE OF THE ESTATE OF; RE LIUNA ..... (Mar.)

391

Construction Industry - Jurisdictional Dispute - IBEW and Labourers' union disputing assignment of certain hand digging and backfilling work at base of transmission towers during course of line refurbishment project - Board confirming assignment to IBEW on basis of economy and efficiency and because other factors considered not favouring one union or the other

ONTARIO HYDRO, EPSCA AND; RE IBEW, LOCAL 1788 AND LIUNA, LOCAL 1059..... (Dec.)

1462

Construction Industry - Jurisdictional Dispute - IBEW and Labourers' union disputing assignment of work in connection with installation of duct or trench similar to Trenwa Duct for exclusive purpose of housing electrical cables - Board decision in *Adam Clark* case not determinative of issue - Board confirming employer's assignment to Labourers' union

COMSTOCK CANADA, IBEW, LOCAL 1687 AND D.J. VENASSE CONSTRUCTION LIMITED AND; RE LIUNA, LOCAL 493 ..... (Mar.)

249

Construction Industry - Jurisdictional Dispute - Ironworkers' union, Boilermakers' union and IBEW disputing assignment of certain work related to shop fabrication, unloading, field fabrication, rigging, erection, and installation of steel supports in Board Area 2 - Unions also disputing description of disputed work and whether steel supports in issue are "multi-purpose" - Board satisfied that work in dispute involved multi-purpose steel supports and that the collective bargaining relationship, area and employer practice, safety, skill and training, and economy and efficient factors all favoured assignment as made to Ironworkers and Boilermakers

ELECON ELECTRICAL CONTRACTORS INC., PRO-MART INDUSTRIAL PRODUCTS LTD., IBEW, LOCAL 530, BBF, LOCAL 128; RE BSOIW, LOCAL 700 ... (May)

645

Construction Industry - Jurisdictional Dispute - Labourers' union and Boilermakers' union disputing assignment of certain work in connection with staffing of tool cribs at certain projects in Board Area 2 - Board determining that work in dispute improperly assigned and should have been assigned to Labourers' union

CANADIAN ERECTORS CONSTRUCTION SERVICES INC., FOSTER WHEELER LIMITED, CONSTRUCTION DIVISION, LIUNA, LOCAL 1089; RE BBF ..... (May)

610

Construction Industry - Jurisdictional Dispute - Labourers' union and Ironworkers' union disputing assignment of certain work, but not agreeing on its description - Board ruling that whether or not work described as involving "metal curtain wall" (as claimed by Ironworkers), disputed work more like metal curtain wall than precast concrete system (as claimed by Labourers) and that disputed work should have been assigned to Ironworkers

ALLIED ARCHITECTURAL SYSTEMS LTD.; RE BSOIW, LOCAL 721; RE LIUNA ..... (Oct.)

1243

Construction Industry - Jurisdictional Dispute - Millwrights' union and Ironworkers' union disputing assignment of work in connection with off-loading, rigging, handling, transport and



installation of flumes at Ford Engine Plant in Windsor - Board not interfering with assignment by employer of work to Ironworkers - Application dismissed

VICTORIA STEEL CORPORATION, BSOIW, LOCAL 700, ONTARIO ERECTORS ASSOCIATION INCORPORATED, ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244 .... (May)

711

Construction Industry - Jurisdictional Dispute - Operative Plasterers and Cement Masons' union and Labourers' union disputing assignment of work related to installation of wire mesh in connection with placing and finishing concrete floors - Board finding work to be cement masons' work - Board not persuaded to disturb assignment to Cement Masons' union

DAFOE FLOOR CONCRETE CONSTRUCTION LTD., LIUNA, LOCAL 1059 AND; RE OPCM LOCAL 598.....(Nov.)

- 1361

Construction Industry - Jurisdictional Dispute - Painters' union and Labourers' union disputing assignment of work involving removal of lead-contaminated plaster, its bagging, and its further removal from site - Board holding that work should have been assigned to Labourers' union

ELLIS-DON CONSTRUCTION LTD. AND J.P. MATTE PEINTURES LTEE, LIUNA LOCAL 247 AND; RE PAT AND THE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 114 .....(Jan.)

10

Construction Industry - Ratification and Strike Vote - Strike - Strike Replacement Workers - Board determining that those permitted to vote in strike vote not a proper voting constituency - Strike vote not meeting requirements of subsection 73.1(2)2 of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

J. FRANZE CONCRETE LTD.; RE LIUNA, LOCAL 1059 ..... (June)

813

Construction Industry - Ratification and Strike Vote - Strike - Strike Replacement Workers - Union conducting strike vote amongst members who had been working in sewer and water-main sector for any employer, including members who had never worked for responding employer - Board determining that where an employer bargains individually with a union, and is neither bargaining in the I.C.I. sector, nor bound by an accreditation order, it is only the votes of employees of the particular employer that are to be taken into account for purposes of calculating the 60 per cent authorization required by section 73.1(2) of the Act - Strike vote not meeting requirements of section 73.1(2) of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

ELGIN CONSTRUCTION, 969774 ONTARIO LIMITED C.O.B. AS; RE LIUNA, LOCAL 1059..... (June)

783

Construction Industry - Related Employer - Board not accepting submission that "GC" and "GG" not carrying on related activities because "GC" involved in non-profit housing and "GG" active in single family homes - Board finding both companies active in residential sector of construction sector - Board rejecting submission that "GC" and "GG" not under common control and direction where "GG" is wholly owned by "F" and "A", and where "F" and "A" have legal ability to control "GC" through power to vote majority of shares of company owning "GC" - Related employer declaration issuing

THE GEORGIAN CONSTRUCTION COMPANY LIMITED; RE LIUNA, LOCAL 183 .....(Mar.)

354

Construction Industry Grievance - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed

by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 ..... (Jan.)

92

Construction Industry Grievance - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Construction Industry Grievance - Abandonment - Bargaining Rights - Constitutional Law - Construction Industry - Board finding constitutional issue raised by employer to be *res judicata* - Fact that there was little contact between union and employer or its employees, or fact that grievances were not filed in all instances of violation of collective agreement (in absence of unambiguous evidence that union knew or reasonably ought to have known of those violations and did nothing) insufficient to warrant finding that union abandoned bargaining rights - Board finding that essential element of estoppel established in relation to both conduct of local union filing grievance and the employee bargaining agency and other ABAs holding bargaining rights for employer's employees - Board deciding that notice bringing estoppel to an end coming with Board's decision - Board dismissing grievance but declaring that employer bound to recognize union's bargaining rights and bound to existing provincial agreement

TORONTO DOMINION BANK; CJA, LOCAL 785 ..... (May)

686

Construction Industry Grievance - Collective Agreement - Construction Industry - Duty of Fair Representation - Duty to Bargain in Good Faith - Settlement - Trusteeship - Unfair Labour Practice - Carpenters' union Local 675 and Interior Systems Contractors' Association ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and

effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA");  
RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL  
675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR  
DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND  
OTHER RELEVANT WORKERS .....(Aug.) 1082

Construction Industry Grievance - Construction Industry - Board determining that amounts set out in Provincial Collective Agreement as payable by employers to various benefit funds are amounts exclusive of retail sales tax - Board allowing grievances alleging that employers failing to remit proper contribution amounts

TESC CONTRACTING COMPANY LIMITED; RE UA, LOCAL 800.....(July) 1018

Construction Industry Grievance - Construction Industry - Board finding employees of responding party to be construction employees and holding that, when engaged in fabrication of ductwork destined for ICI job site, their work is covered by ICI agreement

DURASYSTEMS BARRIERS INC., DUFFY MECHANICAL CONTRACTORS LIMITED;  
RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL  
30.....(Jan.) 14

Construction Industry Grievance - Construction Industry - Board finding that *Social Contract Act* applying to UA members performing I.C.I. work for Windsor Board of Education, but that "fail safe provisions" not applying to two employees earning less than \$30,000 annually from public sector employers - Grievance alleging failure to pay compensation increases contained in provincial agreement allowed in part

BOARD OF EDUCATION FOR THE CITY OF WINDSOR; RE UA, LOCAL  
552 .....(Mar.) 234

Construction Industry Grievance - Construction Industry - Board in previous decision finding that employer bound by provincial agreement, but that union estopped from relying on subcontracting provision of provincial agreement until issuance of that decision - Board not accepting employer's argument that estoppel should apply to contracts entered into after issuance of decision if tendering process commenced prior to Board's decision - Board finding that provincial agreement breached and allowing grievance

TORONTO DOMINION BANK; RE CJA, LOCAL 2050 .....(Dec.) 1500

Construction Industry Grievance - Construction Industry - Damages - Jurisdictional Dispute - Parties - Remedies - Carpenters' union seeking damages in section 126 application, following finding by Board in earlier jurisdictional dispute complaint that its members ought to have been assigned certain work - Board denying Labourers' union standing to participate in hearing of section 126 application - Board applying decision in *Sayers & Associates* and holding that damages should be restricted to circumstances in which Board concludes that contractor/employer did not act reasonably, not those circumstances in which employer rea-



- sonably was wrong - Union not demonstrating that employer acted unreasonably and Board concluding that damages not warranted - Application dismissed
- ROBERTSON YATES CORPORATION LIMITED; RE CJA, LOCAL UNION 785;  
RE LIUNA..... (Feb.) 158
- Construction Industry Grievance - Construction Industry - Parties - Practice and Procedure - Union grieving alleged improper pay for overtime work - Board exercising its discretion to permit Metropolitan Toronto Road Builders Association ("MTRBA") to intervene in referral of grievance to arbitration so as to avoid multiple proceedings and to bind MTRBA and its members to Board's decision
- CANADIAN HIGHWAYS INTERNATIONAL CONSTRUCTORS; RE IUOE,  
LOCAL 793; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIA-  
TION..... (Dec.) 1417
- Construction Industry Grievance - Construction Industry - Practice and Procedure - Sale of a Business - Related Employer - Union seeking pre-hearing production order - Board noting recent Divisional Court decision in *Goodman v. Rossi* and observing that there should be implied undertaking by a party to which documents are produced, although perhaps modified to suit its purpose - Responding employer given ten days to reply to union's request
- D'LUXE DRYWALL (1987), 737049 ONTARIO LTD. O/A; RE DRYWALL ACOUS-  
TIC LATHING AND INSULATION LOCAL 675 ..... (Feb.) 112
- Crown Employees Collective Bargaining Act - Arbitration - Practice and Procedure - Unfair Labour Practice - Board declining to defer unfair labour practice complaint dealing with abolition of certain positions to Grievance Settlement Board
- CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF  
TRANSPORTATION, THE; RE OPSEU ..... (Dec.) 1429
- Crown Employees Collective Bargaining Act - Bargaining Unit - Certification - Union applying to represent all waiters/waitresses employed by employer in City of Niagara, which would include 3 of 4 restaurants operated by employer - Employer proposing unit of all waiters/waitresses employed in Regional Municipality of Niagara, which would include all 4 of employer's restaurants - Board finding union's proposed bargaining unit appropriate
- THE NIAGARA PARKS COMMISSION; RE HOTEL, MOTEL AND RESTAURANT  
EMPLOYEES' UNION, LOCAL 442 ..... (Mar.) 363
- Crown Employees Collective Bargaining Act - Certification - Termination - Association of Law Officers of the Crown ("ALOC") applying to represent articling students employed in Ontario Public Service - Board finding that articling students already represented by Ontario Public Service Employees Union (OPSEU).- Certification application dismissed as untimely - Board also dismissing application to terminate OPSEU's bargaining rights in respect of articling students on ground that Act's provisions regarding termination after voluntary recognition not applying to designation of OPSEU as bargaining agent
- CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY MANAGEMENT  
BOARD OF CABINET, THE; RE ASSOCIATION OF LAW OFFICERS OF THE  
CROWN; RE AMPCEO, OPSEU ..... (Dec.) 1424
- Crown Employees Collective Bargaining Act - Duty of Fair Representation - Applicant complain-  
ing that union's withdrawal of classification grievance, as part of agreement concluding Social Contract negotiations to withdraw about 7000 classification grievances, violating duty of fair representation - Board finding itself without jurisdiction having regard to timing of alleged breach of the Act and effective date of transfer of jurisdiction under Crown Employees Collective Bargaining Act to Labour Relations Board - Board finding, in any

event, that applicant's complaint untimely and lacking substantive merit - Application dismissed

SMITH, DAVID E.; RE OPSEU; RE CROWN IN THE RIGHT OF ONTARIO REPRESENTED BY MANAGEMENT BOARD SECRETARIAT ..... (June) 893

Crown Employees Collective Bargaining Act - Essential Services Agreement - Parties asking Board to determine various "central" essential services issues - Board noting difficulties in adjudication in absence of concrete facts and declining to rule in respect of certain matters - Board directing parties to endeavour to designate as few employees as possible as performing "essential" rather than "emergency" services - Board directing parties to endeavour to arrange essential or emergency work so as to allow it to be performed by employees working hours in collective agreement - Board directing parties to negotiate time for draw of employees to perform essential or emergency services which may be prior to strike vote but within reasonable proximity to time at which strike or lockout possible and which allows ample time to complete list process before such strike or lockout

CROWN IN RIGHT OF ONTARIO, REPRESENTED BY MANAGEMENT BOARD OF CABINET - ESSENTIAL AND EMERGENCY SERVICES, THE; RE OPSEU ..... (June) 735

Crown Transfer - Abandonment - Bargaining Rights - Judicial Review - Sale of a Business - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed - Employer's application for judicial review dismissed by Divisional Court

HERITAGE GREEN SENIOR CENTRE; RE SEIU, LOCAL 532, OLRB AND ONTARIO MINISTRY OF HEALTH ..... (Sept.) 1236

Damages - Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Parties - Remedies - Carpenters' union seeking damages in section 126 application, following finding by Board in earlier jurisdictional dispute complaint that its members ought to have been assigned certain work - Board denying Labourers' union standing to participate in hearing of section 126 application - Board applying decision in *Sayers & Associates* and holding that damages should be restricted to circumstances in which Board concludes that contractor/employer did not act reasonably, not those circumstances in which employer reasonably was wrong - Union not demonstrating that employer acted unreasonably and Board concluding that damages not warranted - Application dismissed

ROBERTSON YATES CORPORTATION LIMITED; RE CJA, LOCAL UNION 785; RE LIUNA ..... (Feb.) 158

Damages - Lock-Out - Remedies - Strike - Strike Replacement Workers - Unfair Labour Practice - Board previously finding that employer violating the Act by using independent contractors to perform work of employee in bargaining unit - Board previously determining that cease and desist direction could not be framed which would prevent company from performing prohibited replacement work, while permitting it to continue to perform other than prohibited replacement work - Board rejecting employer's submission that damages order should not be made - Board ordering employer to pay union a sum equal to charges paid by it to

independent contractors for deliveries which would have been attributable to bargaining unit member but for the strike

NELSON QUARRY COMPANY; RE USWA ..... (May) 649

Dependent Contractor - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - Union representing bargaining unit of dependent contractors engaged in delivery of crushed stone - Quarry employer locking out bargaining unit and subsequently using services of independent brokers to pick up stone from quarry - Employer maintaining that work performed by independent brokers different than work performed by bargaining unit drivers - Union's complaint that employer violating strike replacement provisions allowed in part and dismissed in part - Board inviting parties' written submission regarding appropriate remedy

NELSON QUARRY COMPANY; RE USWA ..... (Jan.) 35

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Employee - Board finding lead hand, who was primary in-house organizer for union, to be "employee" within meaning of Act - Board determining that lay-offs of three bargaining unit members tainted by anti-union animus - Reinstatement with compensation ordered - Board certifying union under section 9.2 of the Act - Board directing distribution Board notice and directing that union be permitted to convene meeting of employees on company premises during normal working hours

Z-LITE JENAMEES; RE AMALGAMATED CLOTHING AND TEXTILES WORKERS' UNION, AFL-CIO-CLC ..... (Feb.) 212

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Remedies - Unfair Labour Practice - Board finding that employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act

PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.) 505

Discharge - Certification - Certification Where Act Contravened - Discharge for Union Activity - Thunder Bay employer asserting inability to finance conduct of proceedings in Toronto and declining to attend hearing into union's certification application and unfair labour practice complaint - Board explaining its travel policy in respect of "fast-track" cases - On basis of uncontradicted evidence, Board finding employer in violation of Act in discharging key union organizer and known union supporter - Reinstatement ordered - Union certified under section 9.2 of the Act

FRADE'S FRUIT LTD.; RE UFCW, LOCAL 175 ..... (Feb.) 122

Discharge - Certification - Construction Industry - Discharge for Union Activity - Evidence - Membership Evidence - Interference in Trade Unions - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no con-



nection between certification application and employee's lay-off - Unfair labour practice complaint dismissed

HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 ..... (Mar.) 272

Discharge - Certification - Construction Industry - Discharge for Union Activity - Evidence - Membership Evidence - Interference in Trade Unions - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no connection between certification application and employee's lay-off - Unfair labour practice complaint dismissed

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Discharge - Construction Industry - Discharge for Union Activity - Board finding that lay-off of three employees and that certain statements made by foreman violating the Act - Reinstatement with compensation ordered

FAHUKI CONSTRUCTION INCORPORATED; RE BAC, LOCAL 2, TORONTO, BARRIE AND THE ONTARIO PROVINCIAL CONFERENCE OF THE I.U.B.A.C. .... (July) 946

Discharge - Discharge for Union Activity - Evidence - Interference in Trade Unions - Practice and Procedure - Unfair Labour Practice - Witness - Board not permitting employer to "split its case" and declining to permit it to call certain witness in reply - Board not persuaded that decision to lay-off four inside union organizers made without anti-union animus - Application allowed - Reinstatement with compensation ordered

SIDUS SYSTEMS INC.; RE USWA ..... (June) 873

Discharge - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Board not permitting union to amend its application mid-way through employer's case - Board unable to accept employer's explanation for discharging key union supporter - Application allowed - Reinstatement with compensation ordered

ATLANTIC PACKAGING PRODUCTS LTD.; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA ..... (Sept.) 1147

Discharge - Duty of Fair Representation - Health and Safety - Practice and Procedure - Unfair Labour Practice - Probationary employee's earlier health and safety discharge complaint dismissed by Board - Employee now seeking reinstatement in new application by shifting focus to trade union and alleging breaches of *Labour Relations Act* - Board unable to discern any labour relations purpose for inquiring into complaint - Complaint dismissed

WILLIAM J. VIVEEN; RE USWA, LOCAL 7135; RE NATIONAL STEEL CAR LIMITED ..... (Jan.) 85

Discharge - Duty of Fair Representation - Judicial Review - Natural Justice - Unfair Labour Practice - Complainant alleging that union violated its duty of fair representation in respect of various matters associated with arbitration hearing dealing with his discharge grievance, including selection of counsel, selection of arbitrator and preparation of the case - Board

finding no fault with representation provided by union to complainant and dismissing application - Complainant seeking judicial review on various grounds, including alleged breach of rules of natural justice - Application for judicial review dismissed by Divisional Court

RICHARD A. POSIVY; RE CUPE, LOCAL 11, THE HYDRO ELECTRIC COMMISSION OF THE CORPORATION OF THE CITY OF NORTH YORK, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Apr.)

577

Discharge - Duty of Fair Representation - Judicial Review - Unfair Labour Practice - Applicant alleging that union breached its duty of fair representation by failing to process his discharge grievance to arbitration - Board not satisfied that applicant's 23 month delay in bringing application satisfactorily explained - Board exercising its discretion against inquiring into application - Application dismissed - Application for judicial review dismissed by Divisional Court

ROBERT ROSS; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION (CAW-CANADA) AND ITS LOCAL 195, NATIONAL AUTO RADIATOR MFG. CO. LTD. AND THE OLRB ..... (Oct.)

1353

Discharge - Duty of Fair Representation - Remedies - Unfair Labour Practice - Board earlier finding that union breached duty of fair representation and remaining seized with respect to remedy - Board directing that applicant's discharge grievance be referred to arbitration and that applicable time limits be waived - Board applying *Bellai Brothers* case in determining that Board without jurisdiction to award costs, as requested by applicant

HILL, WILLIAM JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Oct.)

1249

Discharge - Duty of Fair Representation - Unfair Labour Practice - Board finding no established "local union policy" of taking all discharge grievances to arbitration regardless of merit - Board finding nothing improper in way in which applicant's grievance handled or considered - Application dismissed

ROLAND BERNARD; RE USWA; RE E.S. FOX LIMITED..... (Apr.)

524

Discharge - Duty of Fair Representation - Unfair Labour Practice - Board finding union's decision not to take applicant's discharge grievance to arbitration arbitrary and in bad faith, contrary to section 69 of the Act - Application granted - Board remitting question of remedy to parties

WILLIAM HILL JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Jan.)

21

Discharge - Duty of Fair Representation - Unfair Labour Practice - Union's determination not to refer applicant's discharge grievance to arbitration tainted by inappropriate considerations - Union's conduct both arbitrary and taken in bad faith - Application allowed

COUPERUS, YVONNE; RE UNITED TEXTILE WORKERS OF AMERICA (LOCAL 478); RE C.S. BROOKS CORPORATION..... (Sept.)

1193

Discharge - Duty of Fair Representation - Union's decision not to proceed to arbitration with complainant's discharge grievance violating Act in light of critical job interests at stake, apparent merits of grievance, union's failure to investigate complainant's story or to allow him to participate in meeting of executive and steward body, and in light of union's failure to explain its decision to the Board - Complaint allowed - Union directed to refer grievance to arbitration and employer directed to waive timelines objection

IVAN CVICEK; RE SCHNEIDER EMPLOYEES ASSOCIATION; RE J.M. SCHNEIDER INC. .... (Feb.)

105

Discharge - Employee - Environmental Protection Act - Board dismissing allegation that

employer violating section 174(2) of Environmental Protection Act (EPA) by failing to recall applicant to work in March 1994 following lay-off in November 1993 - Board finding that employer intended November 1993 lay-off to be permanent and that subsequent reprisal against applicant made when applicant no longer employee - In contrast to prohibition against reprisals contained in Labour Relations Act and Occupational Health and Safety Act, protection against reprisals in EPA applying only to "employees" - Application dismissed

VAILLANCOURT CONSTRUCTION LIMITED, EMILE A. VAILLANCOURT (SENIOR), REJEAN CARRIERE; RE ALLAN DUXBURY ..... (July) 1036

Discharge - Evidence - Health and Safety - Practice and Procedure - Applicant alleging violation of *Occupational Health and Safety Act* on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case

LYNDHURST HOSPITAL; RE PAULINE AU ..... (Nov.) 1371

Discharge - Health and Safety - Employer discharging bartender for refusing to serve customer - Bartender having reason to believe that serving customer would pose danger to herself - Bartender's discharge violating *Occupational Health and Safety Act* - Application allowed

BARMAID'S ARM; RE SHARON MOORE ..... (Mar.) 229

Discharge - Health and Safety - Security guard expressing various concerns regarding new assignment including its isolated location, cold temperature and unavailability of drinking water - Security guard discharged following work refusal - Board finding that work refusal complied with section 43(3)(b) of *Occupational Health and Safety Act* and that dismissal was contrary to section 50(1) of the Act - Application allowed - Reinstatement with compensation ordered

CANADIAN CORPS OF COMMISSIONAIRES (HAMILTON); RE PATRICIA DOUGLAS ..... (May) 601

Discharge - Interim Relief - Remedies - Unfair Labour Practice - Union making unfair labour practice complaint in respect of discharge of member of union's bargaining committee and seeking interim reinstatement - Board not accepting employer's submission that balance of harm weighing in its favour because union already certified and because union delayed 17 days in bringing application and because of its assertion that it had no more work for electricians - Application allowed - Board directing that employee be reinstated pending disposition of unfair labour practice complaint

VIDEOLUX CANADA INC.; USWA ..... (Sept.) 1231

Discharge - Just Cause - Unfair Labour Practice - Board finding that employer had just cause for discharging employee accusing of breaching company ticketing and receipting procedures - Application dismissed

UNIT PARK; RE LIUNA, LOCAL 183 ..... (Feb.) 190

Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Employee - Board finding lead hand, who was primary in-house organizer for union, to be "employee" within meaning of Act - Board determining that lay-offs of three bargaining unit members tainted by anti-union animus - Reinstatement with compensation ordered - Board certifying union under section 9.2 of the Act - Board directing distribution Board notice and directing that union be permitted to convene meeting of employees on company premises during normal working hours

Z-LITE JENAMEES; RE AMALGAMATED CLOTHING AND TEXTILES WORKERS' UNION, AFL-CIO-CLC ..... (Feb.) 212



- Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Interference in Trade Unions - Remedies - Unfair Labour Practice - Board finding that employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act
- PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.) 505
- Discharge for Union Activity - Certification - Certification Where Act Contravened - Discharge - Thunder Bay employer asserting inability to finance conduct of proceedings in Toronto and declining to attend hearing into union's certification application and unfair labour practice complaint - Board explaining its travel policy in respect of "fast-track" cases - On basis of uncontradicted evidence, Board finding employer in violation of Act in discharging key union organizer and known union supporter - Reinstatement ordered - Union certified under section 9.2 of the Act
- FRADE'S FRUIT LTD.; RE UFCW, LOCAL 175 ..... (Feb.) 122
- Discharge for Union Activity - Construction Industry - Discharge - Board finding that lay-off of three employees and that certain statements made by foreman violating the Act - Reinstatement with compensation ordered
- FAHUKI CONSTRUCTION INCORPORATED; RE BAC, LOCAL 2, TORONTO, BARRIE AND THE ONTARIO PROVINCIAL CONFERENCE OF THE I.U.B.A.C. .... (July) 946
- Discharge for Union Activity - Discharge - Evidence - Interference in Trade Unions - Practice and Procedure - Unfair Labour Practice - Witness - Board not permitting employer to "split its case" and declining to permit it to call certain witness in reply - Board not persuaded that decision to lay-off four inside union organizers made without anti-union animus - Application allowed - Reinstatement with compensation ordered
- SIDUS SYSTEMS INC.; RE USWA ..... (June) 8783
- Discharge for Union Activity - Discharge - Practice and Procedure - Unfair Labour Practice - Board not permitting union to amend its application mid-way through employer's case - Board unable to accept employer's explanation for discharging key union supporter - Application allowed - Reinstatement with compensation ordered
- ATLANTIC PACKAGING PRODUCTS LTD.; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA ..... (Sept.) 1147
- Duty of Fair Referral - Construction Industry - Board finding that local union's operation of hiring hall violating duty of fair referral where collective agreement requiring that number of employer name requests not exceed number of out-of-work list referrals and where employer name requests and self-solicitations together exceeding number of out-of-work list referrals - Local union's reliance on self-solicitation as single most significant fashion in which members referred to work constituting reckless disregard for terms of collective agreement and effectively undermining and subverting balance struck in 50/50 ratio - Application upheld and Board remaining seized with respect to remedy
- GRAHAM SMITH, ALLEN OUELLETTE AND CHARLES WILBURN; RE BSOIW, LOCAL 700 ..... (Apr.) 418
- Duty of Fair Representation - Collective Agreement - Construction Industry - Construction Industry Grievance - Duty to Bargain in Good Faith - Settlement - Trusteeship - Unfair Labour Practice - Carpenters' union Local 675 and Interior Systems Contractors' Associa-

tion ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA");  
RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL  
675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR  
DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND  
OTHER RELEVANT WORKERS .....(Aug.)

1082

Duty of Fair Representation - Consent to Prosecute - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Applicant asserting that processing and resolution of policy grievance having negative impact on her and amounting to repudiation of collective agreement - Board noting that Bill 100 not containing duty of fair representation and that Labour Relations Act not applying to teachers - Duty of fair representation complaint dismissed - Applicant also seeking consent to prosecute union for alleged contravention of Bill 100 provision regarding binding effect of agreements on parties to the collective agreement and on teachers - Application for consent to prosecute dismissed

AIKIA, RITVA; RE O.S.S.T.F. .... (Oct.)

1239

Duty of Fair Representation - Crown Employees Collective Bargaining Act - Applicant complaining that union's withdrawal of classification grievance, as part of agreement concluding Social Contract negotiations to withdraw about 7000 classification grievances, violating duty of fair representation - Board finding itself without jurisdiction having regard to timing of alleged breach of the Act and effective date of transfer of jurisdiction under Crown Employees Collective Bargaining Act to Labour Relations Board - Board finding, in any event, that applicant's complaint untimely and lacking substantive merit - Application dismissed

SMITH, DAVID E.; RE OPSEU; RE CROWN IN THE RIGHT OF ONTARIO REPRESENTED BY MANAGEMENT BOARD SECRETARIAT ..... (June)

893

Duty of Fair Representation - Discharge - Health and Safety - Practice and Procedure - Unfair Labour Practice - Probationary employee's earlier health and safety discharge complaint dismissed by Board - Employee now seeking reinstatement in new application by shifting focus to trade union and alleging breaches of *Labour Relations Act* - Board unable to discern any labour relations purpose for inquiring into complaint - Complaint dismissed

WILLIAM J. VIVEEN; RE USWA, LOCAL 7135; RE NATIONAL STEEL CAR LIMITED .....(Jan.)

85

Duty of Fair Representation - Discharge - Judicial Review - Natural Justice - Unfair Labour Practice - Complainant alleging that union violated its duty of fair representation in respect of various matters associated with arbitration hearing dealing with his discharge grievance, including selection of counsel, selection of arbitrator and preparation of the case - Board finding no fault with representation provided by union to complainant and dismissing appli-

cation - Complainant seeking judicial review on various grounds, including alleged breach of rules of natural justice - Application for judicial review dismissed by Divisional Court

RICHARD A. POSIVY; RE CUPE, LOCAL 11, THE HYDRO ELECTRIC COMMISSION OF THE CORPORATION OF THE CITY OF NORTH YORK, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Apr.)

577

Duty of Fair Representation - Discharge - Judicial Review - Unfair Labour Practice - Applicant alleging that union breached its duty of fair representation by failing to process his discharge grievance to arbitration - Board not satisfied that applicant's 23 month delay in bringing application satisfactorily explained - Board exercising its discretion against inquiring into application - Application dismissed - Application for judicial review dismissed by Divisional Court

ROBERT ROSS; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION (CAW-CANADA) AND ITS LOCAL 195, NATIONAL AUTO RADIATOR MFG. CO. LTD. AND THE OLRB ..... (Oct.)

1353

Duty of Fair Representation - Discharge - Remedies - Unfair Labour Practice - Board earlier finding that union breached duty of fair representation and remaining seized with respect to remedy - Board directing that applicant's discharge grievance be referred to arbitration and that applicable time limits be waived - Board applying *Bellai Brothers* case in determining that Board without jurisdiction to award costs, as requested by applicant

HILL, WILLIAM JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Oct.)

1249

Duty of Fair Representation - Discharge - Unfair Labour Practice - Board finding no established "local union policy" of taking all discharge grievances to arbitration regardless of merit - Board finding nothing improper in way in which applicant's grievance handled or considered - Application dismissed

ROLAND BERNARD; RE USWA; RE E.S. FOX LIMITED..... (Apr.)

524

Duty of Fair Representation - Discharge - Unfair Labour Practice - Board finding union's decision not to take applicant's discharge grievance to arbitration arbitrary and in bad faith, contrary to section 69 of the Act - Application granted - Board remitting question of remedy to parties

WILLIAM HILL JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Jan.)

21

Duty of Fair Representation - Discharge - Unfair Labour Practice - Union's determination not to refer applicant's discharge grievance to arbitration tainted by inappropriate considerations - Union's conduct both arbitrary and taken in bad faith - Application allowed

COUPERUS, YVONNE; RE UNITED TEXTILE WORKERS OF AMERICA (LOCAL 478); RE C.S. BROOKS CORPORATION..... (Sept.)

1193

Duty of Fair Representation - Discharge - Union's decision not to proceed to arbitration with complainant's discharge grievance violating Act in light of critical job interests at stake, apparent merits of grievance, union's failure to investigate complainant's story or to allow him to participate in meeting of executive and steward body, and in light of union's failure to explain its decision to the Board - Complaint allowed - Union directed to refer grievance to arbitration and employer directed to waive timelines objection

IVAN CVICEK; RE SCHNEIDER EMPLOYEES ASSOCIATION; RE J.M. SCHNEIDER INC. .... (Feb.)

105

Duty of Fair Representation - Parties - Reconsideration - Remedies - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and direct-



ing that union arbitrate grievor's discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed

HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 .....(Dec.) 1437

Duty of Fair Representation - Unfair Labour Practice - Applicant alleging that union failed to represent him adequately in various dealings with employer - Board finding no substance in union's complaints - Application dismissed

HAROLD GOLDSON; RE CAW CANADA, LOCAL 112; RE DE HAVILLAND INC. ....(Mar.) 266

Duty to Bargain in Good Faith - Collective Agreement - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Settlement - Trusteeship - Unfair Labour Practice - Carpenters' union Local 675 and Interior Systems Contractors' Association ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA"); RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL 675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND OTHER RELEVANT WORKERS .....(Aug.) 1082

Duty to Bargain in Good Faith - Collective Agreement - Practice and Procedure - Remedies - Unfair Labour Practice - Union claiming that employer violating its duty to bargain in good faith by refusing to sign collective agreement following vote by employees accepting employer's "final offer" - Employer failing to file response prior to commencement of hearing - Board applying Rule 19 and deeming employer to have accepted all of the facts stated in application - Board deciding case on material before it without necessity of hearing evidence - Application allowed and employer directed to sign collective agreement ratified by bargaining unit

K & SON MAINTENANCE CO. INC.; RE UFCW, LOCAL 175.....(Aug.) 1121

Duty to Bargain in Good Faith - Sale of a Business - Related Employer - Unfair Labour Practice - Teamsters' union and group of employees alleging sale of business and/or seeking related employer declaration in connection with transaction involving sale of retail MFM stores by Steinberg to A&P and closure of Steinberg's distribution centre - Teamsters' union and group of employees alleging that structure of sale transaction motivated by anti-unanimus against Teamsters, that A&P breached Act by refusing to hire Steinberg distribution centre employees because of their membership in Teamsters, and that Steinberg bargained in bad

- faith by representing that collective agreement concessions would ensure job security and then selling Ontario operations and closing distribution warehouse - Applications dismissed
- STEINBERG INC. (MIRACLE FOOD MART DIVISION) AND THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE TEAMSTERS LOCAL UNION NO. 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; RE RWDSU, AFL CIO CLC AND ITS LOCAL 414 ..... (Oct.) 1309
- Duty to Bargain in Good Faith - Unfair Labour Practice - Board finding that employer's removal of wage offer, in context of enormous upheaval caused by *Social Contract Act* and other expenditure reduction legislation in 1993, not amounting to bad faith bargaining - Application dismissed
- CORPORATION OF THE CITY OF THUNDER BAY, THE; RE CUPE - LOCAL 87 (INSIDE UNIT) ..... (Nov.) 1355
- Employee - Bargaining Unit - Certification - Board finding that Discharge Planning Co-ordinator working at public hospital employed in confidential capacity in matters relating to labour relations - Discharge Planning Position excluded from bargaining unit - Final certificate issuing
- NIAGARA-ON-THE-LAKE GENERAL HOSPITAL; RE ONA ..... (Dec.) 1457
- Employee - Bargaining Unit - Certification - Judicial Review - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues - Employer's application for judicial review dismissed
- REYNOLDS-LEMMERZ INDUSTRIES; RE CAW-CANADA, OLRB ..... (Jan.) 93
- Employee - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Board finding lead hand, who was primary in-house organizer for union, to be "employee" within meaning of Act - Board determining that lay-offs of three bargaining unit members tainted by anti-union animus - Reinstatement with compensation ordered - Board certifying union under section 9.2 of the Act - Board directing distribution Board notice and directing that union be permitted to convene meeting of employees on company premises during normal working hours
- Z-LITE JENAMEES; RE AMALGAMATED CLOTHING AND TEXTILES WORKERS' UNION, AFL-CIO-CLC ..... (Feb.) 212
- Employee - Certification - Union seeking to represent theatre's stage employees - Board rejecting employer's assertion that stage hands actually independent contractors and not "employees" within meaning of the Act - Certificate issuing
- GRAND THEATRE CENTRE OF SUDBURY, 1085803 ONTARIO LIMITED C.O.B. AS; RE IATSE, LOCAL 634 ..... (Dec.) 1433
- Employee - Discharge - Environmental Protection Act - Board dismissing allegation that employer violating section 174(2) of Environmental Protection Act (EPA) by failing to recall applicant to work in March 1994 following lay-off in November 1993 - Board finding that employer intended November 1993 lay-off to be permanent and that subsequent reprisal against applicant made when applicant no longer employee - In contrast to prohibition against reprisals contained in Labour Relations Act and Occupational Health and Safety

Act, protection against reprisals in EPA applying only to “employees” - Application dismissed

VAILLANCOURT CONSTRUCTION LIMITED, EMILE A. VAILLANCOURT (SENIOR), REJEAN CARRIERE; RE ALLAN DUXBURY.....(July) 1036

Employee - Employee Reference - Board concluding that, in view of history of dealings between union and employer regarding lead hands who are subject of union’s application, no “question” had arisen within the meaning of section 114(2) of the Act - Application dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA CANADA LOCAL 1-1000; RE BRUCE LEPINE.....(Dec.) 1451

Employee - Employee Reference - Board not accepting that Records Management Co-ordinator working at board of education employed in confidential capacity in matters relating to labour relations - Board determining Records Management Co-ordinator to be “employee” within meaning of the Act

DUFFERIN COUNTY BOARD OF EDUCATION, THE; RE OPSEU.....(Nov.) 1364

Employee Reference - Employee - Board concluding that, in view of history of dealings between union and employer regarding lead hands who are subject of union’s application, no “question” had arisen within the meaning of section 114(2) of the Act - Application dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA CANADA LOCAL 1-1000; RE BRUCE LEPINE .....(Dec.) 1451

Employee Reference - Employee - Board not accepting that Records Management Co-ordinator working at board of education employed in confidential capacity in matters relating to labour relations - Board determining Records Management Co-ordinator to be “employee” within meaning of the Act

DUFFERIN COUNTY BOARD OF EDUCATION, THE; RE OPSEU.....(Nov.) 1364

Employees - Bargaining Unit - Certification - Practice and Procedure - Whether persons employed in disputed classifications should be included in bargaining unit - Employer failing to comply with Board direction to file particulars of its position including details of job functions and basis for employer’s request - Board deciding matter based solely on statement of facts filed by union and on parties’ oral argument - Board not satisfied that lead hands, line persons and senior deburrers exercising managerial functions within meaning of Act - Facts not supporting submission that lead hands, line persons and senior deburrers not sharing sufficient community of interest with other members of proposed bargaining unit - Final certificate issuing

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES.....(Jan.) 59

Employer - Certification - Construction Industry - Board finding that responding personnel agencies not the employers of electricians for whom union seeking bargaining rights

DARE PERSONNEL INC.; RE IBEW, LOCAL 586.....(July) 935

Employer Support - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent’s submission on employer support rejected - Union’s withdrawal of 1980 grievance not giving rise to estoppel - Union’s failure to include respondent on Schedule “F” in connection with 1975 accreditation of Electrical Contractor Asso-



ciation not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 ..... (Jan.)

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Employer Support - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Employer Support - Adjournment - Certification - Charges - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

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Employer Support - Adjournment - Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not

persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA .....(Mar.) 250

Employer Support - Bargaining Rights - Certification - Collective Agreement - Construction Industry - CLAC intervening in certification application brought by IOUE to assert existence of collective agreement between it and employer as bar to application - Board not accepting submission that failure of CLAC to file membership evidence fatal to its ability to discharge onus under section 61 of the Act that it was entitled to represent employees in the bargaining unit at the time that it made collective agreement with employer - Board satisfied that majority vote in favour of accepting proposed collective agreement signifying employees' willingness to have CLAC represent them - Board satisfied that CLAC not receiving employer support such that agreement entered into should not be considered to be collective agreement for purposes of the Act - Application dismissed

GISBORNE DESIGN SERVICES LTD.; RE IUOE, LOCAL 793; RE CLAC ..... (June) 796

Employer Support - Certification - Membership Evidence - Petition - Practice and Procedure - Board rejecting submission that Board without jurisdiction to schedule certification case into "fast track" - Board rejecting argument that notice of application ought to have been given to Steelworkers' union - Board rejecting submission that form of membership evidence submitted by union deficient - Board rejecting argument that Form A-4 Declaration Verifying Membership Evidence filed by union defective - Board rejecting bald and unprioritized allegation that membership evidence tainted by involvement in campaign by person perceived to be member of management - Board not permitting objecting employees to file particulars on day of hearing - Board rejecting submission that it should attach significance to anti-union petition signed before union cards signed - Board accepting primacy of membership evidence filed and finding no reason to exercise its discretion to order representation vote - Certificate issuing

R.J. RALPH AUTOMOTIVE LIMITED; RE COMMUNICATION, ENERGY & PAPERWORKERS UNION OF CANADA (CEP); RE GROUP OF EMPLOYEES ..... (June) 851

Environmental Protection Act - Board declining to inquire into allegation that employee disciplined contrary to *Environmental Protection Act* for various reasons, including nature and utility of remedy sought, delay in bringing complaint, and fact that subject matter of complaint had previously been subject matter of grievance arbitration under collective agreement

HYDRA-DYNE INDUSTRIAL CLEANING; RE VINCE DE PAEPE ..... (Dec.) 1442

Environmental Protection Act - Discharge - Employee - Board dismissing allegation that employer violating section 174(2) of Environmental Protection Act (EPA) by failing to recall applicant to work in March 1994 following lay-off in November 1993 - Board finding that employer intended November 1993 lay-off to be permanent and that subsequent reprisal against applicant made when applicant no longer employee - In contrast to prohibition against reprisals contained in Labour Relations Act and Occupational Health and Safety Act, protection against reprisals in EPA applying only to "employees" - Application dismissed

VAILLANCOURT CONSTRUCTION LIMITED, EMILE A. VAILLANCOURT (SENIOR), REJEAN CARRIERE; RE ALLAN DUXBURY ..... (July) 1036

Essential Services Agreement - Crown Employees Collective Bargaining Act - Parties asking Board to determine various "central" essential services issues - Board noting difficulties in adjudication in absence of concrete facts and declining to rule in respect of certain matters - Board directing parties to endeavour to designate as few employees as possible as perform-

ing “essential” rather than “emergency” services - Board directing parties to endeavour to arrange essential or emergency work so as to allow it to be performed by employees working hours in collective agreement - Board directing parties to negotiate time for draw of employees to perform essential or emergency services which may be prior to strike vote but within reasonable proximity to time at which strike or lockout possible and which allows ample time to complete list process before such strike or lockout

CROWN IN RIGHT OF ONTARIO, REPRESENTED BY MANAGEMENT BOARD OF CABINET - ESSENTIAL AND EMERGENCY SERVICES, THE; RE OPSEU ..... (June)

735

Evidence - Adjournment - Certification - Charges - Employer Support - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into “fast track”, sitting vice-chair alone contrary to parties’ wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees’ of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Evidence - Adjournment - Certification - Charges - Employer Support - Intimidation and Coercion - Membership Evidence - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA ..... (Mar.)

250

Evidence - Bargaining Unit - Certification - Practice and Procedure - Union applying to represent bargaining unit of movie projectionists - Issue arising as to craft status of projectionists - Board determining that licensing requirement under *Theatres Act* determinative of skills component of test that union must meet under section 6(3) of the Act - Union’s objection to relevance of further questions about specific skills of projectionists upheld

NIAGARA FALLS IMAX THEATRE AND/OR NIAGARA FALLS THEATRE VENTURE; RE IATSE, LOCAL 173; RE BERNARD WILLER ..... (Sept.)

1209

Evidence - Certification - Charges - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board’s Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employ-



er's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.) 230

Evidence - Certification - Charges - Intimidation and Coercion - Membership Evidence - Board inquiring into reliability of union's membership evidence following disclosure that employee who had signed union cards as "witness" had not seen employees sign the cards - Board satisfied on the evidence that there was no intention to mislead Board - Board satisfied that employee who had countersigned cards was in position to confirm that the persons had signed the cards and wished to belong to the union - In all the circumstances, Board seeing no reason to reject cards submitted, nor to order representation vote - Board finding that charges of intimidation and coercion in collection of membership evidence not made out - Certificate issuing

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES ..... (Mar.) 290

Evidence - Certification - Charges - Intimidation and Coercion - Membership Evidence - Union moving that Board not inquire into certain employee allegations of undue pressure and misrepresentation during union's organizing drive - Board satisfied that allegations of intimidation amounting to nothing more than persistence, perhaps exaggerated salesmanship, or insensitivity - Board finding no reason to discount membership evidence simply because employees asked for union cards back and were refused - Board seeing no reason to direct representation vote - Certificate issuing

TIM HORTON DONUTS, MARKET DRIVE DONUTS LTD., C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES ..... (Feb.) 187

Evidence - Certification - Construction Industry - Discharge - Discharge for Union Activity - Membership Evidence - Interference in Trade Unions - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no connection between certification application and employee's lay-off - Unfair labour practice complaint dismissed

HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 ..... (Mar.) 272

Evidence - Certification - Construction Industry - Practice and Procedure - Board confirming authority of Officer to make procedural rulings regarding admissibility of evidence during an examination - Board finding no compelling reason to interfere with Officer's decision to receive certain evidence and, accordingly, declining to do so

DESOURDY PAVING; RE IUOE, LOCAL 793 ..... (Apr.) 395

Evidence - Certification - Membership Evidence - Board finding that documentary evidence filed by union in form of authorizations for representation not establishing that employees are members or have applied to be members - Certification applications dismissed

FAMOUS PLAYERS INC.; RE IATSE ..... (Apr.) 397

Evidence - Certification - Membership Evidence - Petition - Practice and Procedure - Union filing new certification application on same date as Board decision granting leave to withdraw earlier application - Employer's request that Board exercise its discretion under section 105(3)(c) of the Act to refuse to entertain new certification application denied - Employer requesting that Board disclose whether any membership cards filed with new application signed by persons who had previously signed anti-union petition and submitting that union should be required to establish voluntariness of signatures on such cards - - Employer request denied - Board not satisfied that petitions representing voluntary expression of employee wishes - Certificate issuing

A-1 RENT-A-TOOL ONTARIO LTD.; RE USWA; RE GROUP OF EMPLOYEES.....(Jan.)

1

Evidence - Certification - Membership Evidence - Petition - Pre-Hearing Vote - Union applying for certification and requesting pre-hearing vote under section 9 of the Act - Board earlier directing holding of pre-hearing representation vote over objection of employer - Employer submitting that Board without jurisdiction to conduct vote, count ballots or certify union - Board holding that documentary evidence indicating that employee applies for and accepts membership in trade union satisfies membership requirement in section 9 of the Act - Board further holding that, had it been required to decide the matter, documentary evidence in form of application for membership also satisfying requirement in section 9 - Board distinguishing between letter withdrawing support from union and one revoking union membership - Letters withdrawing support cannot have effect of dropping union's level of membership so as to result in ballots cast in pre-hearing vote not being counted - Board directing that ballots be counted forthwith

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP OF EMPLOYEES.....(Mar.)

303

Evidence - Certification - Membership Evidence - Practice and Procedure - Evidence before Board disclosing that individual whose name appeared as "witness" on union's membership evidence did not actually see employees sign their cards - Board dismissing union's motion that it not inquire further into matter as raising no prima facie case of misconduct or irregularity - Board, however, not agreeing that evidence before it making out prima facie case warranting inquiry into Form A-4 filed by union

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES..... (Feb.)

134

Evidence - Certification - Membership Evidence - Pre-Hearing Vote - Board finding that membership evidence stating that employee applying for membership and agreeing to be bound by union's constitution satisfying statutory requirement in section 9 of the Act - Board adopting and applying decision in *Knob Hill Farms* case - Certificate issuing

OTTAWA BOARD OF EDUCATION; RE EDUCATION SUPPORT STAFF ASSOCIATION; RE CUPE, LOCAL 1400..... (May)

663

Evidence - Construction Industry - Petition - Practice and Procedure - Termination - Termination application brought by husband of employer - Board finding that decision to bring termination application made in consultation with applicant's wife - Board adopting *Hurley Corporation* case and allowing responding party to make motion akin to non-suit motion without being put to its election as to whether or not to call evidence - Evidence not supporting finding of voluntariness - Application dismissed

D & E INSULATION, EVE SIGFRID, CARRYING ON BUSINESS AS; RE DONALD EPP; RE HFIA, LOCAL 95..... (June)

748

Evidence - Discharge - Discharge for Union Activity - Interference in Trade Unions - Practice and Procedure - Unfair Labour Practice - Witness - Board not permitting employer to "split

its case” and declining to permit it to call certain witness in reply - Board not persuaded that decision to lay-off four inside union organizers made without anti-union animus - Application allowed - Reinstatement with compensation ordered

SIDUS SYSTEMS INC.; RE USWA ..... (June) 873

Evidence - Discharge - Health and Safety - Practice and Procedure - Applicant alleging violation of *Occupational Health and Safety Act* on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case

LYNDHURST HOSPITAL; RE PAULINE AU ..... (Nov.) 1371

Evidence - Practice and Procedure - Related Employer - Sale of a Business - Unfair Labour Practice - Employer objecting to certain line of questions to be raised by union on grounds of solicitor-client privilege - Board not prepared to establish exception to solicitor-client privilege on basis of assertion that purpose the solicitor-client communication was to facilitate breach of the Act - Objection upheld

CAREFUL HAND LAUNDRY AND DRY CLEANERS LIMITED, KIRLIN LEASING LIMITED; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSMEN AND HELPERS OF AMERICA ..... (May) 627

Final Offer Vote - First Contract Arbitration - Reference - Employer applying to Minister of Labour for final offer vote under section 40 of Act after first contract arbitration initiated under section 41 - Whether Minister should direct vote - Board holding that section 40 contemplating availability of strike or lock-out activity as pre-condition to employer's right to request final offer vote - Initiation of first contract arbitration precluding strike or lock-out by virtue of subsection 40(13) of the Act, thereby foreclosing employer from requesting final offer vote - Board advising Minister not to direct vote

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (Mar.) 349

Financial Statements - Applicant complaining that audited financial statement furnished by local inadequate - Application dismissed

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 & EDGAR DOULL; RE DONALD PAQUETTE ..... (Oct.) 1270

First Contract Arbitration - Final Offer Vote - Reference - Employer applying to Minister of Labour for final offer vote under section 40 of Act after first contract arbitration initiated under section 41 - Whether Minister should direct vote - Board holding that section 40 contemplating availability of strike or lock-out activity as pre-condition to employer's right to request final offer vote - Initiation of first contract arbitration precluding strike or lock-out by virtue of subsection 40(13) of the Act, thereby foreclosing employer from requesting final offer vote - Board advising Minister not to direct vote

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (Mar.) 349

Fraud - Certification - Charges - Board declining to inquire into non-sign allegations following withdrawal by union of its certification application - Application dismissed

CFM INC.; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA); RE OLSTEN SERVICES LIMITED ..... (June) 725

Health and Safety - Discharge - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Probationary employee's earlier health and safety discharge complaint



dismissed by Board - Employee now seeking reinstatement in new application by shifting focus to trade union and alleging breaches of <i>Labour Relations Act</i> - Board unable to discern any labour relations purpose for inquiring into complaint - Complaint dismissed	
WILLIAM J. VIVEEN; RE USWA, LOCAL 7135; RE NATIONAL STEEL CAR LIMITED.....(Jan.)	85
Health and Safety - Discharge - Employer discharging bartender for refusing to serve customer - Bartender having reason to believe that serving customer would pose danger to herself - Bartender's discharge violating <i>Occupational Health and Safety Act</i> - Application allowed	
BARMAID'S ARM; RE SHARON MOORE.....(Mar.)	229
Health and Safety - Discharge - Evidence - Practice and Procedure - Applicant alleging violation of <i>Occupational Health and Safety Act</i> on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of <i>prima facie</i> case	
LYNDHURST HOSPITAL; RE PAULINE AU .....(Nov.)	1371
Health and Safety - Discharge - Security guard expressing various concerns regarding new assignment including its isolated location, cold temperature and unavailability of drinking water - Security guard discharged following work refusal - Board finding that work refusal complied with section 43(3)(b) of <i>Occupational Health and Safety Act</i> and that dismissal was contrary to section 50(1) of the Act - Application allowed - Reinstatement with compensation ordered	
CANADIAN CORPS OF COMMISSIONAIRES (HAMILTON); RE PATRICIA DOUGLAS .....(May)	601
Health and Safety - Judicial Review - Employee citing second-hand tobacco smoke in work refusal - Board finding health and safety not real reason for refusal and that employer discipline not unlawful in circumstances - Complaint dismissed - Employee seeking judicial review on ground that members' conduct give rise to reasonable apprehension of bias - Employee issuing summons to witness to Board member to secure evidence for use in judicial review application - Motions court judge concluding that summons an abuse of process and quashing it - Three-judge panel of Divisional Court upholding decision of motions judge and dismissing motion to set decision aside - leave to appeal to Court of Appeal denied	
BOEING CANADA/DE HAVILLAND DIVISION AND SUSAN A. TACON, JOHN A. RONSON AND DAVID A. PATTERSON AND OLRB; RE BETTES, JILL...(Aug.)	1146
Hospital Labour Disputes Arbitration Act - Reference - Board advising Minister that "mother house" operated by order of nuns offering various services to its members, including care for aging members, not a "hospital" within meaning of Hospital Labour Disputes Arbitration Act	
MAISON MÈRE DES SOEURS DE LA CHARITÉ D'OTTAWA; RE CUPE, LOCAL 3101.....(July)	978
Hospital Labour Disputes Arbitration Act - Reference - Board advising Minister that group home providing attendant care to physically disabled adults a "hospital" within meaning of Hospital Labour Disputes Arbitration Act	
NORTH YORKERS FOR DISABLED PERSONS INC.; RE SEIU, LOCAL 204 ... (July)	1001
Hospital Labour Disputes Arbitration Act - Reference - Board advising Minister that homemaker	

services programme operate by Red Cross not a “hospital” within meaning of Hospital Labour Disputes Arbitration Act

CANADIAN RED CROSS SOCIETY SOCIETY (ONTARIO DIVISION), THE; RE SEIU, LOCAL 204 (A.F.L., C.I.O., C.L.C.)..... (May) 612

Hospital Labour Disputes Arbitration Act - Reference - Board advising Minister that retirement residence a “hospital” within meaning of Hospital Labour Disputes Arbitration Act

GODERICH PLACE RETIREMENT RESIDENCE; SEU, LOCAL 210 ..... (Apr.) 416

Hospital Labour Disputes Arbitration Act - Reference - Board finding residential facility for aged or infirm to be “hospital” within meaning of *Hospital Labour Disputes Arbitration Act*

MEADOWCROFT PLACE (GUELPH), MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES, 5M MANAGEMENT SERVICES LIMITED, AND MEADOWCROFT LIMITED PARTNERSHIP, C.O.B. AS; RE SEIU, LOCAL 532 ..... (Nov.) 1375

Interference in Trade Unions - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board finding that employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act

PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.) 505

Interference in Trade Unions - Certification - Construction Industry - Discharge - Discharge for Union Activity - Evidence - Membership Evidence - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no connection between certification application and employee’s lay-off - Unfair labour practice complaint dismissed

HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 ..... (Mar.) 272

Interference in Trade Unions - Discharge - Discharge for Union Activity - Evidence - Practice and Procedure - Unfair Labour Practice - Witness - Board not permitting employer to “split its case” and declining to permit it to call certain witness in reply - Board not persuaded that decision to lay-off four inside union organizers made without anti-union animus - Application allowed - Reinstatement with compensation ordered

SIDUS SYSTEMS INC.; RE USWA ..... (June) 873

Interim Relief - Constitutional Law - Remedies - Employer operating mail sorting operation as part of network of companies providing private mail and courier service through North America - Board finding that employer’s labour relations falling within federal jurisdiction - Application for interim relief dismissed

TANAT CANADA, A DIVISION OF G.D. EXPRESS WORLDWIDE CANADA INC.; RE CANADIAN UNION OF POSTAL WORKERS ..... (Apr.) 534

Interim Relief - Construction Industry - Jurisdictional Dispute - Remedies - Sheet Metal Workers' union and Plumbers' union disputing assignment of certain work involving installation of fan-powered boxes - Sheet Metal Workers seeking interim order restoring original assignment of disputed work - Application for interim order dismissed

NIAGARA MECHANICAL CONTRACTORS, LESLIE BROTHERS INC., UA,  
LOCAL UNION 666; RE SMW, LOCAL 537..... (July)

997

Interim Relief - Construction Industry - Unfair Labour Practice - Remedies - Applicant filing unfair labour practice complaint alleging that Shinglers' union bringing charges against him as result of his participation in other Board proceedings - Applicant in other Board proceedings alleging, amongst other things, that Shinglers' union not a "trade union" within meaning of the Act - Harm to applicant in perception of potential witnesses that applicant being singled out for punishment because of involvement in Board proceeding outweighing harm to union associated with restraint on conduct of internal union affairs - Board directing that internal union trial of applicant be postponed pending outcome of unfair labour practice complaint

BROUWERS, HANK; RE CANADIAN UNION OF SHINGLERS AND ALLIED  
WORKERS ..... (Sept.)

1160

Interim Relief - Discharge - Remedies - Unfair Labour Practice - Union making unfair labour practice complaint in respect of discharge of member of union's bargaining committee and seeking interim reinstatement - Board not accepting employer's submission that balance of harm weighing in its favour because union already certified and because union delayed 17 days in bringing application and because of its assertion that it had no more work for electricians - Application allowed - Board directing that employee be reinstated pending disposition of unfair labour practice complaint

VIDEOLUX CANADA INC.; USWA ..... (Sept.)

1231

Interim Relief - Jurisdictional Dispute - Remedies - Carpenters' union representing employees at employer's planning mill - IWA representing employees at employer's sawmill - Carpenters' union making jurisdictional dispute complaint in respect of employer's plan to consolidate operations of planning mill and sawmill at location of sawmill - Carpenters' seeking interim order preventing employer from relocating planning mill pending determination of jurisdictional dispute complaint - Interim relief application dismissed

TEMBEC FOREST PRODUCTS (1990) INC., IWA-CANADA, LOCAL 1-100 AND;  
RE CJA, LOCAL 1030..... (Jan.)

66

Intimidation and Coercion - Adjournment - Certification - Charges - Employer Support - Evidence - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right



to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Intimidation and Coercion - Adjournment - Certification - Charges - Employer Support - Evidence - Membership Evidence - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA ..... (Mar.)

250

Intimidation and Coercion - Certification - Certification Where Act Contravened - Constitutional Law - Practice and Procedure - Unfair Labour Practice - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing

SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD. C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION ..... (Dec.)

1475

Intimidation and Coercion - Certification - Charges - Evidence - Judicial Review - Membership Evidence - Natural Justice - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.)

230

Intimidation and Coercion - Certification - Charges - Evidence - Membership Evidence - Board inquiring into reliability of union's membership evidence following disclosure that employee who had signed union cards as "witness" had not seen employees sign the cards - Board satisfied on the evidence that there was no intention to mislead Board - Board satisfied that employee who had countersigned cards was in position to confirm that the persons had signed the cards and wished to belong to the union - In all the circumstances, Board seeing no reason to reject cards submitted, nor to order representation vote - Board finding that charges of intimidation and coercion in collection of membership evidence not made out - Certificate issuing

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES ..... (Mar.)

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- Intimidation and Coercion - Certification - Charges - Evidence - Membership Evidence - Union moving that Board not inquire into certain employee allegations of undue pressure and misrepresentation during union's organizing drive - Board satisfied that allegations of intimidation amounting to nothing more than persistence, perhaps exaggerated salesmanship, or insensitivity - Board finding no reason to discount membership evidence simply because employees asked for union cards back and were refused - Board seeing no reason to direct representation vote - Certificate issuing
- TIM HORTON DONUTS, MARKET DRIVE DONUTS LTD., C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES ..... (Feb.) 187
- Intimidation and Coercion - Certification - Charges - Membership Evidence - Employer alleging that membership evidence collected through threats to employees' job security by former supervisor at workplace - Board not convinced that former supervisor's encouragement of unionization casting doubt on voluntariness of membership evidence submitted - Certificate issuing
- VERSA SERVICES LTD.; RE CAW-CANADA; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 414; MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647 ..... (Jan.) 79
- Intimidation and Coercion - Certification - Charges - Membership Evidence - Employer operating greenhouse near Thunder Bay - Union applying for certification in May when 13 members of bargaining unit employed - Employer asking Board to defer application and to hold representation vote in November at time when 35 to 40 employees to be employed performing seasonal work - Board satisfied that composition of bargaining unit on application date sufficiently representative - Board dismissing allegations of intimidation and coercion in collection of membership evidence - Certificate issuing
- HILL'S GREENHOUSE LTD.; RE IWA-CANADA, LOCAL 2693; RE LOUISE MYLLYAHO ..... (July) 970
- Intimidation and Coercion - Picketing - Strike - Unfair Labour Practice - Employer complaining that picketing by truckers on lawful strike violating Act by causing unlawful strike, and by interfering with statutory rights by intimidation and coercion - Employer also seeking restrictions on picketing under section 11.1 of the Act - Board dismissing unfair labour practice complaint and finding that right to operate business not derived from or dependent upon Labour Relations Act - Board dismissing application under section 11.1 on grounds that picketing not taking place on "premises" to which section 11.1 applies
- NELSON QUARRY COMPANY; RE USWA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL UNION NO. 494 ..... (June) 825
- Intimidation and Coercion - Remedies - Unfair Labour Practice - Union complaining that employer took certain steps (including refusing to reinstate grievor, contracting out certain services and imposing hiring and purchasing freeze) in response to arbitration award - Union alleging that employer seeking to intimidate employees and their union, and to circumvent effect of award - Board allowing application - Board making various orders, including direction that employer cease and desist from proceeding further with contracting out process initiated earlier - Employer also prohibited from initiating consideration of or contracting out services performed by bargaining unit members for further period of 6 months
- CORPORATION OF THE CITY OF NORTH YORK; RE CUPE, LOCAL 94 .... (Sept.) 1170
- Judicial Review - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Natural Jus-

tice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 ..... (Jan.)

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Judicial Review - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Judicial Review - Abandonment - Bargaining Rights - Crown Transfer - Sale of a Business - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed - Employer's application for judicial review dismissed by Divisional Court

HERITAGE GREEN SENIOR CENTRE; RE SEIU, LOCAL 532, OLRB AND ONTARIO MINISTRY OF HEALTH ..... (Sept.)

1236

Judicial Review - Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Membership Evidence - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged manage-



rial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Judicial Review - Bargaining Unit - Certification - Employee - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues - Employer's application for judicial review dismissed

REYNOLDS-LEMMERZ INDUSTRIES; RE CAW-CANADA, OLRB ..... (Jan.)

93

Judicial Review - Bargaining Unit - Certification - Union applying to represent employees of retirement home in Guelph - Employer submitting that bargaining unit should include group of "floating" maintenance and housekeeping workers, who work out of head office and who service some 25 retirement homes owned by employer, when those maintenance employees work at Guelph home - Board determining that maintenance and housekeeping employees who float to different homes should be included in bargaining unit - Certificate issuing - Application for judicial review dismissed by Divisional Court

MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES, AND MEADOWCROFT LIMITED PARTNERSHIP C.O.B. AS MEADOWCROFT PLACE (GUELPH); RE SEIU LOCAL 532 AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C. AND THE OLRB, THE RIGHT HONOURABLE ELIZABETH WITMER, MINISTER OF LABOUR FOR ONTARIO AND 5M MANAGEMENT SERVICES LTD. .... (Oct.)

1353

Judicial Review - Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Natural Justice - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.)

230

Judicial Review - Certification - Reconsideration - Representation Vote - Board finding ballot cast in representation vote spoiled where ballot marked with heavy "X" in "No" circle and light oblique line in "Yes" circle - Certificate issuing - Employer applying for reconsidera-

tion on ground that spoiled ballots should have been treated as “ballots cast” within meaning of section 9.1 of Act - Issue raised for first time in reconsideration application - Employer offering no reason why argument on ballots cast not raised earlier - Board also noting its established case law to effect that spoiled ballots are not included within “ballots cast” - Reconsideration application dismissed - Employer’s application for judicial review dismissed by Divisional Court

MAIDSTONE MANUFACTURING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND OLRB ..... (Mar.) 388

Judicial Review - Construction Industry - Sector Determination - Board finding construction of underground concrete water storage tank to be work in ICI sector of construction industry, and not in heavy engineering sector or sewer and watermains sector as asserted by Labourers’ union - Declaration issuing accordingly - Labourers’ application for judicial review dismissed by Divisional Court

MATHEWS CONTRACTING INC., A BANKRUPT AND THE OLRB, CJA, LOCAL 18, COOPERS & LYBRAND LIMITED, TRUSTEE OF THE ESTATE OF; RE LIUNA ..... (Mar.) 391

Judicial Review - Discharge - Duty of Fair Representation - Natural Justice - Unfair Labour Practice - Complainant alleging that union violated its duty of fair representation in respect of various matters associated with arbitration hearing dealing with his discharge grievance, including selection of counsel, selection of arbitrator and preparation of the case - Board finding no fault with representation provided by union to complainant and dismissing application - Complainant seeking judicial review on various grounds, including alleged breach of rules of natural justice - Application for judicial review dismissed by Divisional Court

RICHARD A. POSIVY; RE CUPE, LOCAL 11, THE HYDRO ELECTRIC COMMISSION OF THE CORPORATION OF THE CITY OF NORTH YORK, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Apr.) 577

Judicial Review - Discharge - Duty of Fair Representation - Unfair Labour Practice - Applicant alleging that union breached its duty of fair representation by failing to process his discharge grievance to arbitration - Board not satisfied that applicant’s 23 month delay in bringing application satisfactorily explained - Board exercising its discretion against inquiring into application - Application dismissed - Application for judicial review dismissed by Divisional Court

ROBERT ROSS; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION (CAW-CANADA) AND ITS LOCAL 195, NATIONAL AUTO RADIATOR MFG. CO. LTD. AND THE OLRB ..... (Oct.) 1353

Judicial Review - Health and Safety - Employee citing second-hand tobacco smoke in work refusal - Board finding health and safety not real reason for refusal and that employer discipline not unlawful in circumstances - Complaint dismissed - Employee seeking judicial review on ground that members’ conduct give rise to reasonable apprehension of bias - Employee issuing summons to witness to Board member to secure evidence for use in judicial review application - Motions court judge concluding that summons an abuse of process and quashing it - Three-judge panel of Divisional Court upholding decision of motions judge and dismissing motion to set decision aside - leave to appeal to Court of Appeal denied

BOEING CANADA/DE HAVILLAND DIVISION AND SUSAN A. TACON, JOHN A. RONSON AND DAVID A. PATTERSON AND OLRB; RE BETTES, JILL ... (Aug.) 1146

Judicial Review - Picketing - Strike - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using



managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer applying for judicial review - Union moving to strike out affidavit filed by employer in pending application for judicial review on basis that it is admissible - Divisional Court ordering that affidavit be struck

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB .....(Mar.)

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Judicial Review - Picketing - Strike - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer seeking judicial review - Divisional Court finding that Board exceeded its jurisdiction by failing to address and decide whether there was an exercise of the right to picket granted under subsection 11.1(3) of the *Act* before considering whether to exercise its discretion under subsection 11.1(5) to impose restrictions - Application for judicial review allowed

GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, THE; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (July)

1045

Judicial Review - Sale of a Business - Union Alleging "sale of a business" where municipality cancelling its contract with transit company and "taking back" operation of municipality's transit system - Transit company found in earlier Board decision to be federal undertaking - *Labour Relations Act* amendments providing in section 64.1 that successor rights provisions applying to federal-to-provincial sales, but amendments coming into force only on January 1, 1993 - Respondents asserting that transaction occurred on December 31, 1992 and that section 64.1 of the *Act* having no application - Respondents also denying that transaction amounting to "sale of a business" - Board satisfied that by acquiring substantial part of work force previously employed by transit company, municipality transferring to itself an essential element of that business - Board concluding that municipality's hiring of employees on and after January 1, 1993 triggering sale and that section 64.1 of the *Act* applying to the transaction - Board finding and declaring sale of a business - Municipality applying for judicial review - Divisional Court quashing decision of the Board

CHARTERWAYS TRANSPORTATION LIMITED AND ONTARIO LABOUR RELATIONS BOARD, NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 222; RE THE CORPORATION OF THE TOWN OF AJAX .... (June)

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Judicial Review - Sale of a Business - Union Alleging "sale of a business" where municipality cancelling its contract with transit company and "taking back" operation of municipality's transit system - Transit company found in earlier Board decision to be federal undertaking - *Labour Relations Act* amendments providing in section 64.1 that successor rights provisions applying to federal-to-provincial sales, but amendments coming into force only on January 1, 1993 - Respondents asserting that transaction occurred on December 31, 1992 and that section 64.1 of the Act having no application - Respondents also denying that transaction amounting to "sale of a business" - Board satisfied that by acquiring substantial part of work force previously employed by transit company, municipality transferring to itself an essential element of that business - Board concluding that municipality's hiring of employees on and after January 1, 1993 triggering sale and that section 64.1 of the Act applying to the transaction - Board finding and declaring sale of a business - Municipality applying for judicial review - Divisional Court quashing decision of the Board - Court of Appeal granting union's application for leave to appeal

CHARTERWAYS TRANSPORTATION LIMITED AND ONTARIO LABOUR RELATIONS BOARD, NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 222; RE THE CORPORATION OF THE TOWN OF AJAX... (Sept.)

1236

Jurisdictional Dispute - Association of Allied Health Professionals (AAHP) disputing assignment of Health Promoter classification to CUPE bargaining unit by Board of Health employer - Board distinguishing decisions in *Eastern Ontario Health Unit* and *Board of Health for Peterborough County-City Health Unit* cases - Board sustaining employer's assignment of Health Promoter classification to CUPE bargaining unit.

BOARD OF HEALTH FOR THE KINGSTON, FRONTENAC AND LENNOX AND ADDINGTON HEALTH UNIT, THE, AND CUPE AND ITS LOCAL 3175; RE AAHPO..... (May)

587

Jurisdictional Dispute - Construction Industry - Constitutional Law - Labourers' union and Carpenters' union disputing assignment of certain work in respect of construction of bridge across St. Clair River between USA and Canada - Board not accepting Carpenters' submission that construction of bridge in issue falling within federal labour relations jurisdiction - Board declining to disturb assignment of work made to Carpenters

PCL CONSTRUCTION LIMITED, PCL CIVIL CONSTRUCTORS (CANADA) INC., PCL CONSTRUCTORS INC., PCL CONSTRUCTORS EASTERN INC., PCL/MCCARTHY, A JOINT VENTURE, CJA, LOCAL 1256; RE LIUNA, LOCAL 1089.....(Aug.)

1127

Jurisdictional Dispute - Construction Industry - Construction Industry Grievance - Damages - Parties - Remedies - Carpenters' union seeking damages in section 126 application, following finding by Board in earlier jurisdictional dispute complaint that its members ought to have been assigned certain work - Board denying Labourers' union standing to participate in hearing of section 126 application - Board applying decision in *Sayers & Associates* and holding that damages should be restricted to circumstances in which Board concludes that contractor/employer did not act reasonably, not those circumstances in which employer reasonably was wrong - Union not demonstrating that employer acted unreasonably and Board concluding that damages not warranted - Application dismissed

ROBERTSON YATES CORPORATION LIMITED; RE CJA, LOCAL UNION 785; RE LIUNA..... (Feb.)

158

Jurisdictional Dispute - Construction Industry - IBEW and Labourers' union disputing assignment of certain hand digging and backfilling work at base of transmission towers during course of line refurbishment project - Board confirming assignment to IBEW on basis of

economy and efficiency and because other factors considered not favouring one union or the other	
ONTARIO HYDRO, EPSCA AND; RE IBEW, LOCAL 1788 AND LIUNA, LOCAL 1059..... (Dec.)	1462
Jurisdictional Dispute - Construction Industry - IBEW and Labourers' union disputing assignment of work in connection with installation of duct or trench similar to Trenwa Duct for exclusive purpose of housing electrical cables - Board decision in <i>Adam Clark</i> case not determinative of issue - Board confirming employer's assignment to Labourers' union	
COMSTOCK CANADA, IBEW, LOCAL 1687 AND D.J. VENASSE CONSTRUCTION LIMITED AND; RE LIUNA, LOCAL 493 ..... (Mar.)	249
Jurisdictional Dispute - Construction Industry - Interim Relief - Remedies - Sheet Metal Workers' union and Plumbers' union disputing assignment of certain work involving installation of fan-powered boxes - Sheet Metal Workers seeking interim order restoring original assignment of disputed work - Application for interim order dismissed	
NIAGARA MECHANICAL CONTRACTORS, LESLIE BROTHERS INC., UA, LOCAL UNION 666; RE SMW, LOCAL 537..... (July)	997
Jurisdictional Dispute - Construction Industry - Ironworkers' union, Boilermakers' union and IBEW disputing assignment of certain work related to shop fabrication, unloading, field fabrication, rigging, erection, and installation of steel supports in Board Area 2 - Unions also disputing description of disputed work and whether steel supports in issue are "multi-purpose" - Board satisfied that work in dispute involved multi-purpose steel supports and that the collective bargaining relationship, area and employer practice, safety, skill and training, and economy and efficient factors all favoured assignment as made to Ironworkers and Boilermakers	
ELECON ELECTRICAL CONTRACTORS INC., PRO-MART INDUSTRIAL PRODUCTS LTD., IBEW, LOCAL 530, BBF, LOCAL 128; RE BSOIW, LOCAL 700 ... (May)	645
Jurisdictional Dispute - Construction Industry - Labourers' union and Boilermakers' union disputing assignment of certain work in connection with staffing of tool cribs at certain projects in Board Area 2 - Board determining that work in dispute improperly assigned and should have been assigned to Labourers' union	
CANADIAN ERECTORS CONSTRUCTION SERVICES INC., FOSTER WHEELER LIMITED, CONSTRUCTION DIVISION, LIUNA, LOCAL 1089; RE BBF ..... (May)	610
Jurisdictional Dispute - Construction Industry - Labourers' union and Ironworkers' union disputing assignment of certain work, but not agreeing on its description - Board ruling that whether or not work described as involving "metal curtain wall" (as claimed by Ironworkers), disputed work more like metal curtain wall than precast concrete system (as claimed by Labourers) and that disputed work should have been assigned to Ironworkers	
ALLIED ARCHITECTURAL SYSTEMS LTD.; RE BSOIW, LOCAL 721; RE LIUNA ..... (Oct.)	1243
Jurisdictional Dispute - Construction Industry - Millwrights' union and Ironworkers' union disputing assignment of work in connection with off-loading, rigging, handling, transport and installation of flumes at Ford Engine Plant in Windsor - Board not interfering with assignment by employer of work to Ironworkers - Application dismissed	
VICTORIA STEEL CORPORATION, BSOIW, LOCAL 700, ONTARIO ERECTORS ASSOCIATION INCORPORATED, ASSOCIATION OF MILLWRIGHTING CONTRACTORS OF ONTARIO; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244 .... (May)	711

- Jurisdictional Dispute - Construction Industry - Operative Plasterers and Cement Masons' union and Labourers' union disputing assignment of work related to installation of wire mesh in connection with placing and finishing concrete floors - Board finding work to be cement masons' work - Board not persuaded to disturb assignment to Cement Masons' union
- DAFOE FLOOR CONCRETE CONSTRUCTION LTD., LIUNA, LOCAL 1059 AND;  
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- Jurisdictional Dispute - Construction Industry - Painters' union and Labourers' union disputing assignment of work involving removal of lead-contaminated plaster, its bagging, and its further removal from site - Board holding that work should have been assigned to Labourers' union
- ELLIS-DON CONSTRUCTION LTD. AND J.P. MATTE PEINTURES LTEE, LIUNA  
LOCAL 247 AND; RE PAT AND THE ONTARIO COUNCIL OF THE INTERNA-  
TIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL  
UNION 114 .....(Jan.) 20
- Jurisdictional Dispute - Interim Relief - Remedies - Carpenters' union representing employees at employer's planning mill - IWA representing employees at employer's sawmill - Carpen-  
ters' union making jurisdictional dispute complaint in respect of employer's plan to consoli-  
date operations of planning mill and sawmill at location of sawmill - Carpenters' seeking  
interim order preventing employer from relocating planning mill pending determination of  
jurisdictional dispute complaint - Interim relief application dismissed
- TEMBEC FOREST PRODUCTS (1990) INC., IWA-CANADA, LOCAL 1-100 AND;  
RE CJA, LOCAL 1030.....(Jan.) 66
- Jurisdictional Dispute - University's faculty association and staff association disputing assignment  
of certain library reference desk and library tour work - Board confirming university's  
assignment of disputed work to members of both faculty association and staff association
- BOARD OF GOVERNORS OF ALGOMA UNIVERSITY COLLEGE; RE ALGOMA  
UNIVERSITY COLLEGE STAFF ASSOCIATION AND ALGOMA UNIVERSITY  
COLLEGE FACULTY ASSOCIATION .....(Jan.) 9
- Just Cause - Discharge - Unfair Labour Practice - Board finding that employer had just cause for  
discharging employee accusing of breaching company ticketing and receipting procedures -  
Application dismissed
- UNIT PARK; RE LIUNA, LOCAL 183 ..... (Feb.) 190
- Lock-Out - Bargaining Rights - Constitutional Law - Strike - Strike Replacement Workers -  
Trade Union - Unfair Labour Practice - American League and National League of Profes-  
sional Baseball Clubs locking-out umpires represented by Association of Major League  
Umpires throughout United States and Canada - Board finding that umpires working in  
Toronto "employees" within meaning of Labour Relations Act, umpires' organization to  
be "trade union" within meaning of the Act, and that umpires' organization holding bar-  
gaining rights for umpires under Labour Relations Act - Board declaring lock-out of  
umpires in Ontario unlawful because parties failed to go through compulsory statutory con-  
ciliation process - Employment of replacement umpires likewise declared unlawful as con-  
trary to section 73.1 of the Act
- THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL  
BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE  
THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE  
BASEBALL PLAYERS ASSOCIATION.....(Apr.) 540
- Lock-Out - Board finding that lock-out of referees by National Basketball Association (NBA) in



Ontario illegal - Board directing NBA to assign members of NBA Referees' Association to NBA games in Toronto until conciliation processes complied with

NATIONAL BASKETBALL ASSOCIATION; RE NATIONAL BASKETBALL REFEREES ASSOCIATION .....(Nov.)

1389

Lock-Out - Damages - Remedies - Strike - Strike Replacement Workers - Unfair Labour Practice - Board previously finding that employer violating the Act by using independent contractors to perform work of employee in bargaining unit - Board previously determining that cease and desist direction could not be framed which would prevent company from performing prohibited replacement work, while permitting it to continue to perform other than prohibited replacement work - Board rejecting employer's submission that damages order should not be made - Board ordering employer to pay union a sum equal to charges paid by it to independent contractors for deliveries which would have been attributable to bargaining unit member but for the strike

NELSON QUARRY COMPANY; RE USWA ..... (May)

649

Lock-Out - Dependent Contractor - Strike - Strike Replacement Workers - Unfair Labour Practice - Union representing bargaining unit of dependent contractors engaged in delivery of crushed stone - Quarry employer locking out bargaining unit and subsequently using services of independent brokers to pick up stone from quarry - Employer maintaining that work performed by independent brokers different than work performed by bargaining unit drivers - Union's complaint that employer violating strike replacement provisions allowed in part and dismissed in part - Board inviting parties' written submission regarding appropriate remedy

NELSON QUARRY COMPANY; RE USWA .....(Jan.)

35

Membership Evidence - Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing

CONSUMERS DISTRIBUTING; RE USWA .....(Mar.)

250

Membership Evidence - Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Natural Justice - Practice and Procedure - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right

to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Membership Evidence - Agricultural Labour Relations Act - Certification - Charges - Employer objecting to jurisdiction of the Board on grounds that agricultural industry division allegedly not designated in manner contemplated by Agricultural Labour Relations Act - Objection dismissed - Board also dismissing objection to reliability of membership evidence submitted by union - Certificate issuing

HIGHLINE PRODUCE LIMITED; RE UFCW; RE THERESA SARKIS ..... (June)

803

Membership Evidence - Certification - Charges - Evidence - Intimidation and Coercion - Board inquiring into reliability of union's membership evidence following disclosure that employee who had signed union cards as "witness" had not seen employees sign the cards - Board satisfied on the evidence that there was no intention to mislead Board - Board satisfied that employee who had countersigned cards was in position to confirm that the persons had signed the cards and wished to belong to the union - In all the circumstances, Board seeing no reason to reject cards submitted, nor to order representation vote - Board finding that charges of intimidation and coercion in collection of membership evidence not made out - Certificate issuing

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES ..... (Mar.)

290

Membership Evidence - Certification - Charges - Evidence - Intimidation and Coercion - Judicial Review - Natural Justice - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.)

230

Membership Evidence - Certification - Charges - Evidence - Intimidation and Coercion - Union moving that Board not inquire into certain employee allegations of undue pressure and misrepresentation during union's organizing drive - Board satisfied that allegations of intimidation amounting to nothing more than persistence, perhaps exaggerated salesmanship, or insensitivity - Board finding no reason to discount membership evidence simply because employees asked for union cards back and were refused - Board seeing no reason to direct representation vote - Certificate issuing

TIM HORTON DONUTS, MARKET DRIVE DONUTS LTD., C.O.B. AS; RE USWA; RE GROUP OF EMPLOYEES ..... (Feb.)

187

Membership Evidence - Certification - Charges - Intimidation and Coercion - Employer alleging that membership evidence collected through threats to employees' job security by former supervisor at workplace - Board not convinced that former supervisor's encouragement of

unionization casting doubt on voluntariness of membership evidence submitted - Certificate issuing

VERSA SERVICES LTD.; RE CAW-CANADA; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 414; MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647 .....(Jan.)

79

Membership Evidence - Certification - Charges - Intimidation and Coercion - Employer operating greenhouse near Thunder Bay - Union applying for certification in May when 13 members of bargaining unit employed - Employer asking Board to defer application and to hold representation vote in November at time when 35 to 40 employees to be employed performing seasonal work - Board satisfied that composition of bargaining unit on application date sufficiently representative - Board dismissing allegations of intimidation and coercion in collection of membership evidence - Certificate issuing

HILL'S GREENHOUSE LTD.; RE IWA-CANADA, LOCAL 2693; RE LOUISE MYLLYAHU.....(July)

970

Membership Evidence - Certification - Construction Industry - Discharge - Discharge for Union Activity - Evidence - Interference in Trade Unions - Unfair Labour Practice - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no connection between certification application and employee's lay-off - Unfair labour practice complaint dismissed

HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 .....(Mar.)

272

Membership Evidence - Certification - Construction Industry - Petition - Pre-Hearing Vote - CLAC applying to displace Sheet Metal Workers' union as bargaining agent for employer's employees - Board rejecting Sheet Metal's assertion that membership evidence filed by CLAC nullified by subsequent reaffirmations signed by employer's employees - Reaffirmations having no effect on employees' membership in CLAC and, accordingly, having no effect on CLAC's level of membership support - Board also applying *Knob Hill Farms* case in determining that there is no place for change of heart documents in pre-hearing vote proceeding

COVERTITE EASTERN LIMITED; RE CLAC, CONSTRUCTION WORKERS LOCAL 52; RE SMW, LOCAL 47 .....(June)

729

Membership Evidence - Certification - Employer Support - Petition - Practice and Procedure - Board rejecting submission that Board without jurisdiction to schedule certification case into "fast track" - Board rejecting argument that notice of application ought to have been given to Steelworkers' union - Board rejecting submission that form of membership evidence submitted by union deficient - Board rejecting argument that Form A-4 Declaration Verifying Membership Evidence filed by union defective - Board rejecting bald and unparticularized allegation that membership evidence tainted by involvement in campaign by person perceived to be member of management - Board not permitting objecting employees to file particulars on day of hearing - Board rejecting submission that it should attach significance to anti-union petition signed before union cards signed - Board accepting primacy of



membership evidence filed and finding no reason to exercise its discretion to order representation vote - Certificate issuing

R.J. RALPH AUTOMOTIVE LIMITED; RE COMMUNICATION, ENERGY & PAPERWORKERS UNION OF CANADA (CEP); RE GROUP OF EMPLOYEES..... (June) 851

Membership Evidence - Certification - Evidence - Board finding that documentary evidence filed by union in form of authorizations for representation not establishing that employees are members or have applied to be members - Certification applications dismissed

FAMOUS PLAYERS INC.; RE IATSE ..... (Apr.) 397

Membership Evidence - Certification - Evidence - Petition - Practice and Procedure - Union filing new certification application on same date as Board decision granting leave to withdraw earlier application - Employer's request that Board exercise its discretion under section 105(3)(c) of the Act to refuse to entertain new certification application denied - Employer requesting that Board disclose whether any membership cards filed with new application signed by persons who had previously signed anti-union petition and submitting that union should be required to establish voluntariness of signatures on such cards - - Employer request denied - Board not satisfied that petitions representing voluntary expression of employee wishes - Certificate issuing

A-1 RENT-A-TOOL ONTARIO LTD.; RE USWA; RE GROUP OF EMPLOYEES..... (Jan.) 1

Membership Evidence - Certification - Evidence - Petition - Pre-Hearing Vote - Union applying for certification and requesting pre-hearing vote under section 9 of the Act - Board earlier directing holding of pre-hearing representation vote over objection of employer - Employer submitting that Board without jurisdiction to conduct vote, count ballots or certify union - Board holding that documentary evidence indicating that employee applies for and accepts membership in trade union satisfies membership requirement in section 9 of the Act - Board further holding that, had it been required to decide the matter, documentary evidence in form of application for membership also satisfying requirement in section 9 - Board distinguishing between letter withdrawing support from union and one revoking union membership - Letters withdrawing support cannot have effect of dropping union's level of membership so as to result in ballots cast in pre-hearing vote not being counted - Board directing that ballots be counted forthwith

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP OF EMPLOYEES..... (Mar.) 303

Membership Evidence - Certification - Evidence - Practice and Procedure - Evidence before Board disclosing that individual whose name appeared as "witness" on union's membership evidence did not actually see employees sign their cards - Board dismissing union's motion that it not inquire further into matter as raising no prima facie case of misconduct or irregularity - Board, however, not agreeing that evidence before it making out prima facie case warranting inquiry into Form A-4 filed by union

JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES..... (Feb.) 134

Membership Evidence - Certification - Evidence - Pre-Hearing Vote - Board finding that membership evidence stating that employee applying for membership and agreeing to be bound by union's constitution satisfying statutory requirement in section 9 of the Act - Board adopting and applying decision in *Knob Hill Farms* case - Certificate issuing

OTTAWA BOARD OF EDUCATION; RE EDUCATION SUPPORT STAFF ASSOCIATION; RE CUPE, LOCAL 1400..... (May) 663

Membership Evidence - Certification - Petition - Timeliness - Board finding certain petitions untimely where they were received by Board after date on which certification application was sent by registered mail - Board finding other petition timely where request to transfer petition from earlier withdrawn certification application to new application post-dated new certification application date - Board rejecting argument that membership evidence insufficient on grounds that cards failed to reflect witness to signature, that copy of membership evidence not forwarded to International union as required by union's constitution, that membership applications failed to contain language showing commitment to be bound to union's constitution, and that membership applications were confusing to employees - Board rejecting argument that membership evidence tainted by content of union's correspondence to employees making reference to Labour Relations Board - Board rejecting argument that Form A-4 filed by union unsatisfactory - Interim certificate issuing in respect of one application

OSHAWA GROUP LIMITED; RE UFCW, AFL-CIO-CLC ..... (Apr.)

477

Natural Justice - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractor Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal - Supreme Court of Canada dismissing application for leave to appeal

ELLIS-DON LIMITED; RE OLRB AND IBEW, LOCAL 894 ..... (Jan.)

92

Natural Justice - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Employer applying for judicial review on grounds that Board violated principles of natural justice and that decision patently unreasonable - Divisional Court satisfied that decision not patently unreasonable and that there was no basis for speculation that Full Board meeting had been conducted contrary to principles articulated by Supreme Court of Canada in *Consolidated-Bathurst* case - Application for judicial review dismissed

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894 ..... (Dec.)

1506

Natural Justice - Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Practice and Procedure -

Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the Act - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Natural Justice - Certification - Charges - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA, SAMUEL OFOSU ANSAH AND OLRB ..... (Feb.)

230

Natural Justice - Certification - Practice and Procedure - Application date and terminal date falling within period of employer's summer shut-down - Employer posting Form B-4 in workplace as directed but, in view of shut-down, employees not receiving notice of application prior to terminal date - Board rejecting employer's argument that application *void ab initio*, but directing that terminal date be extended

OLYMPUS PLASTICS LTD.; RE UAW ..... (Aug.)

1123

Natural Justice - Discharge - Duty of Fair Representation - Judicial Review - Unfair Labour Practice - Complainant alleging that union violated its duty of fair representation in respect of various matters associated with arbitration hearing dealing with his discharge grievance, including selection of counsel, selection of arbitrator and preparation of the case - Board finding no fault with representation provided by union to complainant and dismissing application - Complainant seeking judicial review on various grounds, including alleged breach of rules of natural justice - Application for judicial review dismissed by Divisional Court

RICHARD A. POSIVY; RE CUPE, LOCAL 11, THE HYDRO ELECTRIC COMMISSION OF THE CORPORATION OF THE CITY OF NORTH YORK, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Apr.)

577

Parties - Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Remedies - Carpenters' union seeking damages in section 126 application, following finding by Board in earlier jurisdictional dispute complaint that its members ought to have been assigned certain work - Board denying Labourers' union standing to participate in hearing of section 126 application - Board applying decision in *Sayers & Associates* and holding that damages should be restricted to circumstances in which Board concludes that



contractor/employer did not act reasonably, not those circumstances in which employer reasonably was wrong - Union not demonstrating that employer acted unreasonably and Board concluding that damages not warranted - Application dismissed

ROBERTSON YATES CORPORATION LIMITED; RE CJA, LOCAL UNION 785;  
RE LIUNA..... (Feb.)

158

Parties - Construction Industry - Construction Industry Grievance - Practice and Procedure - Union grieving alleged improper pay for overtime work - Board exercising its discretion to permit Metropolitan Toronto Road Builders Association ("MTRBA") to intervene in referral of grievance to arbitration so as to avoid multiple proceedings and to bind MTRBA and its members to Board's decision

CANADIAN HIGHWAYS INTERNATIONAL CONSTRUCTORS; RE IUOE,  
LOCAL 793; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION..... (Dec.)

1417

Parties - Duty of Fair Representation - Reconsideration - Remedies - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor's discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed

HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Dec.)

1437

Parties - Practice and Procedure - Strike - Timeliness - Termination - Steelworkers' union alleging that termination application untimely as having been brought within six months of commencement of strike - Employer disputing that strike occurred - Board rejecting union's submission that employer ought not to be permitted to intervene in application to raise strike issue - Board finding that picketing by bargaining unit members was concerted activity intended to restrict or limit output (although it did not have that effect) - Application dismissed as untimely

METRO TAXI LTD. C.O.B. AS CAPITAL TAXI; RE RAM SEENANAN, ON HIS  
BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF METRO TAXI  
LTD. C.O.B. AS CAPITAL TAXI, OPERATING AS TAXI OWNERS AND/OR TAXI  
DRIVERS; RE USWA ..... (Nov.)

1378

Petition - Bargaining Unit - Bargaining Rights - Combination of Bargaining Units - Termination - Timeliness - Practice and Procedure - Three weeks following union's application to combine existing full-time and part-time bargaining units, employee in full-time unit filing application to terminate bargaining rights in that unit - Board finding it appropriate to consider and determine termination application prior to entertaining union's application to combine bargaining units - Board satisfied that signatures on petition in support of termination application representing voluntary wishes of those who signed - Representation vote directed

SUEDON FOODS LTD. C.O.B. AS ELIZABETH STREET I.G.A.; RE UFCW,  
LOCAL 175 ..... (Feb.)

166

Petition - Certification - Construction Industry - Membership Evidence - Pre-Hearing Vote - CLAC applying to displace Sheet Metal Workers' union as bargaining agent for employer's employees - Board rejecting Sheet Metal's assertion that membership evidence filed by CLAC nullified by subsequent reaffirmations signed by employer's employees - Reaffirmations having no effect on employees' membership in CLAC and, accordingly, having no effect on CLAC's level of membership support - Board also applying *Knob Hill Farms* case

in determining that there is no place for change of heart documents in pre-hearing vote proceeding

COVERTITE EASTERN LIMITED; RE CLAC, CONSTRUCTION WORKERS LOCAL 52; RE SMW, LOCAL 47 ..... (June) 729

Petition - Certification - Employer Support - Membership Evidence - Practice and Procedure - Board rejecting submission that Board without jurisdiction to schedule certification case into "fast track" - Board rejecting argument that notice of application ought to have been given to Steelworkers' union - Board rejecting submission that form of membership evidence submitted by union deficient - Board rejecting argument that Form A-4 Declaration Verifying Membership Evidence filed by union defective - Board rejecting bald and unparticularized allegation that membership evidence tainted by involvement in campaign by person perceived to be member of management - Board not permitting objecting employees to file particulars on day of hearing - Board rejecting submission that it should attach significance to anti-union petition signed before union cards signed - Board accepting primacy of membership evidence filed and finding no reason to exercise its discretion to order representation vote - Certificate issuing

R.J. RALPH AUTOMOTIVE LIMITED; RE COMMUNICATION, ENERGY & PAPERWORKERS UNION OF CANADA (CEP); RE GROUP OF EMPLOYEES ..... (June) 851

Petition - Certification - Evidence - Membership Evidence - Practice and Procedure - Union filing new certification application on same date as Board decision granting leave to withdraw earlier application - Employer's request that Board exercise its discretion under section 105(3)(c) of the Act to refuse to entertain new certification application denied - Employer requesting that Board disclose whether any membership cards filed with new application signed by persons who had previously signed anti-union petition and submitting that union should be required to establish voluntariness of signatures on such cards - - Employer request denied - Board not satisfied that petitions representing voluntary expression of employee wishes - Certificate issuing

A-1 RENT-A-TOOL ONTARIO LTD.; RE USWA; RE GROUP OF EMPLOYEES ..... (Jan.) 1

Petition - Certification - Evidence - Membership Evidence - Pre-Hearing Vote - Union applying for certification and requesting pre-hearing vote under section 9 of the Act - Board earlier directing holding of pre-hearing representation vote over objection of employer - Employer submitting that Board without jurisdiction to conduct vote, count ballots or certify union - Board holding that documentary evidence indicating that employee applies for and accepts membership in trade union satisfies membership requirement in section 9 of the Act - Board further holding that, had it been required to decide the matter, documentary evidence in form of application for membership also satisfying requirement in section 9 - Board distinguishing between letter withdrawing support from union and one revoking union membership - Letters withdrawing support cannot have effect of dropping union's level of membership so as to result in ballots cast in pre-hearing vote not being counted - Board directing that ballots be counted forthwith

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP OF EMPLOYEES ..... (Mar.) 303

Petition - Certification - Membership Evidence - Timeliness - Board finding certain petitions untimely where they were received by Board after date on which certification application was sent by registered mail - Board finding other petition timely where request to transfer petition from earlier withdrawn certification application to new application post-dated new certification application date - Board rejecting argument that membership evidence insufficient on grounds that cards failed to reflect witness to signature, that copy of membership

evidence not forwarded to International union as required by union's constitution, that membership applications failed to contain language showing commitment to be bound to union's constitution, and that membership applications were confusing to employees - Board rejecting argument that membership evidence tainted by content of union's correspondence to employees making reference to Labour Relations Board - Board rejecting argument that Form A-4 filed by union unsatisfactory - Interim certificate issuing in respect of one application

OSHAWA GROUP LIMITED; RE UFCW, AFL-CIO-CLC ..... (Apr.)

477

Petition - Construction Industry - Evidence - Practice and Procedure - Termination - Termination application brought by husband of employer - Board finding that decision to bring termination application made in consultation with applicant's wife - Board adopting *Hurley Corporation* case and allowing responding party to make motion akin to non-suit motion without being put to its election as to whether or not to call evidence - Evidence not supporting finding of voluntariness - Application dismissed

D & E INSULATION, EVE SIGFRID, CARRYING ON BUSINESS AS; RE DONALD EPP; RE HFIA, LOCAL 95 ..... (June)

748

Picketing - Intimidation and Coercion - Strike - Unfair Labour Practice - Employer complaining that picketing by truckers on lawful strike violating Act by causing unlawful strike, and by interfering with statutory rights by intimidation and coercion - Employer also seeking restrictions on picketing under section 11.1 of the Act - Board dismissing unfair labour practice complaint and finding that right to operate business not derived from or dependent upon Labour Relations Act - Board dismissing application under section 11.1 on grounds that picketing not taking place on "premises" to which section 11.1 applies

NELSON QUARRY COMPANY; RE USWA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL UNION NO. 494 ..... (June)

825

Picketing - Judicial Review - Strike - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer applying for judicial review - Union moving to strike out affidavit filed by employer in pending application for judicial review on basis that it is admissible - Divisional Court ordering that affidavit be struck

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (Mar.)

392

Picketing - Judicial Review - Strike - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to



persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer seeking judicial review - Divisional Court finding that Board exceeded its jurisdiction by failing to address and decide whether there was an exercise of the right to picket granted under subsection 11.1(3) of the *Act* before considering whether to exercise its discretion under subsection 11.1(5) to impose restrictions - Application for judicial review allowed

GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, THE; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (July)

1045

Practice and Procedure - Accreditation - Bargaining Unit - Construction Industry - Residential Low Rise Forming Contractors Association applying for accreditation - Applicant and Local 183 of Labourers' union agreeing on appropriate bargaining unit - Board finding unit appropriate despite objections of Metropolitan Toronto Apartment Builders Association and Toronto Residential Construction Labour Bureau - Board setting "employer date" and directing that employers listed on Schedules "E" and "F" receive notice of application and of hearing

RESIDENTIAL LOW RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY, THE; RE LIUNA, LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; TORONTO RESIDENTIAL CONSTRUCTION LABOUR BUREAU; TORONTO HOUSING LABOUR BUREAU; ONTARIO FORMWORK ASSOCIATION; RESIDENTIAL FRAMING ASSOCIATION; AND ONTARIO CONCRETE & DRAIN CONTRACTORS ASSOCIATION ..... (Dec.)

1471

Practice and Procedure - Adjournment - Certification - Charges - Employer Support - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Board explaining decision to have vice-chair sit alone to hear and determine certification application where parties requesting inclusion of Board Members on panel - Board explaining decision not to adjourn hearing in order to provide further notice to objecting employees who had failed to attend hearing - Board declining to hear evidence of alleged managerial involvement in organizing campaign on ground that facts pleaded not disclosing *prima facie* case for application of section 13 of the *Act* - Board not persuaded that union membership evidence obtained through misrepresentation as alleged by employer - Certificate issuing - Employer and objecting employees applying for judicial review on various grounds, including alleged jurisdictional errors in scheduling certification cases into "fast track", sitting vice-chair alone contrary to parties' wishes and without permitting parties opportunity to make submissions to the Chair, and depriving objecting employees' of right to participate in hearing respecting allegations of union misconduct in collection of membership evidence - Application dismissed by Divisional Court

CONSUMERS DISTRIBUTING INC.; RE USWA AND THE OLRB; RE CHRISTINE J. KIMBERLEY, LAURA DIANE PADDON AND DIMITRA TZORTZIS; RE USWA AND THE OLRB ..... (May)

724

Practice and Procedure - Adjournment - Certification - Construction Industry - Board Officer conducting examination into dispute over list and composition of bargaining unit - Counsel seeking adjournment following examination-in chief of witness on ground that he was taken by surprise by evidence, and asking that Board rule on request - Board explaining importance of Board Officer examination process and observing that Board Officer in best position to rule on requests for adjournments and other procedural matters - Accordingly, as a general proposition, Board will uphold the Officer's procedural directions, absent a com-



tion application on eve on hearing, and later that day filing new certification application - Employer opposing withdrawal of first application - Employer seeking to have matter proceed and (given its understanding of union's level of membership support) to have Board direct representation vote - Board dismissing union's first certification application

DUTCH BOY FOOD MARKETS (WEBER STREET), OSHAWA GROUP LIMITED,  
C.O.B. AS; RE UFCW .....(Aug.) 1065

Practice and Procedure - Certification - Certification Where Act Contravened - Constitutional Law - Intimidation and Coercion - Unfair Labour Practice - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing

SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD.  
C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION .....(Dec.) 1475

Practice and Procedure - Certification - Charges - Evidence - Intimidation and Coercion - Judicial Review - Membership Evidence - Natural Justice - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed - Employer applying for judicial review on various grounds, including allegation that Board's decision not to receive evidence of allegations that had not been properly particularized violated rules of natural justice - Judicial review application dismissed by Divisional Court

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA,  
SAMUEL OFOSU ANSAH AND OLRB .....(Feb.) 230

Practice and Procedure - Certification - Construction Industry - Evidence - Board confirming authority of Officer to make procedural rulings regarding admissibility of evidence during an examination - Board finding no compelling reason to interfere with Officer's decision to receive certain evidence and, accordingly, declining to do so

DESOURDY PAVING; RE IUOE, LOCAL 793 .....(Apr.) 395

Practice and Procedure - Certification - Employer Support - Membership Evidence - Petition - Board rejecting submission that Board without jurisdiction to schedule certification case into "fast track" - Board rejecting argument that notice of application ought to have been given to Steelworkers' union - Board rejecting submission that form of membership evidence submitted by union deficient - Board rejecting argument that Form A-4 Declaration Verifying Membership Evidence filed by union defective - Board rejecting bald and unparticularized allegation that membership evidence tainted by involvement in campaign by person perceived to be member of management - Board not permitting objecting employees to file particulars on day of hearing - Board rejecting submission that it should attach significance to anti-union petition signed before union cards signed - Board accepting primacy of membership evidence filed and finding no reason to exercise its discretion to order representation vote - Certificate issuing

R.J. RALPH AUTOMOTIVE LIMITED; RE COMMUNICATION, ENERGY &  
PAPERWORKERS UNION OF CANADA (CEP); RE GROUP OF EMPLOYEES .....(June) 851



- Practice and Procedure - Certification - Evidence - Membership Evidence - Evidence before Board disclosing that individual whose name appeared as "witness" on union's membership evidence did not actually see employees sign their cards - Board dismissing union's motion that it not inquire further into matter as raising no prima facie case of misconduct or irregularity - Board, however, not agreeing that evidence before it making out prima facie case warranting inquiry into Form A-4 filed by union
- JONES WOOD INDUSTRIES INC.; RE CJA, LOCAL 1072; RE GROUP OF EMPLOYEES ..... (Feb.) 134
- Practice and Procedure - Certification - Evidence - Membership Evidence - Petition - Union filing new certification application on same date as Board decision granting leave to withdraw earlier application - Employer's request that Board exercise its discretion under section 105(3)(c) of the Act to refuse to entertain new certification application denied - Employer requesting that Board disclose whether any membership cards filed with new application signed by persons who had previously signed anti-union petition and submitting that union should be required to establish voluntariness of signatures on such cards - - Employer request denied - Board not satisfied that petitions representing voluntary expression of employee wishes - Certificate issuing
- A-1 RENT-A-TOOL ONTARIO LTD.; RE USWA; RE GROUP OF EMPLOYEES ..... (Jan.) 1
- Practice and Procedure - Certification - Natural Justice - Application date and terminal date falling within period of employer's summer shut-down - Employer posting Form B-4 in workplace as directed but, in view of shut-down, employees not receiving notice of application prior to terminal date - Board rejecting employer's argument that application *void ab initio*, but directing that terminal date be extended
- OLYMPUS PLASTICS LTD.; RE UAW ..... (Aug.) 1123
- Practice and Procedure - Collective Agreement - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Union claiming that employer violating its duty to bargain in good faith by refusing to sign collective agreement following vote by employees accepting employer's "final offer" - Employer failing to file response prior to commencement of hearing - Board applying Rule 19 and deeming employer to have accepted all of the facts stated in application - Board deciding case on material before it without necessity of hearing evidence - Application allowed and employer directed to sign collective agreement ratified by bargaining unit
- K & SON MAINTENANCE CO. INC.; RE UFCW, LOCAL 175 ..... (Aug.) 1121
- Practice and Procedure - Construction Industry - Construction Industry Grievance - Parties - Union grieving alleged improper pay for overtime work - Board exercising its discretion to permit Metropolitan Toronto Road Builders Association ("MTRBA") to intervene in referral of grievance to arbitration so as to avoid multiple proceedings and to bind MTRBA and its members to Board's decision
- CANADIAN HIGHWAYS INTERNATIONAL CONSTRUCTORS; RE IUOE, LOCAL 793; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION ..... (Dec.) 1417
- Practice and Procedure - Construction Industry - Construction Industry Grievance - Sale of a Business - Related Employer - Union seeking pre-hearing production order - Board noting recent Divisional Court decision in *Goodman v. Rossi* and observing that there should be implied undertaking by a party to which documents are produced, although perhaps modified to suit its purpose - Responding employer given ten days to reply to union's request
- D'LUXE DRYWALL (1987), 737049 ONTARIO LTD. O/A; RE DRYWALL ACOUSTIC LATHING AND INSULATION LOCAL 675 ..... (Feb.) 112

- Practice and Procedure - Construction Industry - Evidence - Petition - Termination - Termination application brought by husband of employer - Board finding that decision to bring termination application made in consultation with applicant's wife - Board adopting *Hurley Corporation* case and allowing responding party to make motion akin to non-suit motion without being put to its election as to whether or not to call evidence - Evidence not supporting finding of voluntariness - Application dismissed
- D & E INSULATION, EVE SIGFRID, CARRYING ON BUSINESS AS; RE DONALD EPP; RE HFIA, LOCAL 95 ..... (June) 748
- Practice and Procedure - Discharge - Discharge for Union Activity - Evidence - Interference in Trade Unions - Unfair Labour Practice - Witness - Board not permitting employer to "split its case" and declining to permit it to call certain witness in reply - Board not persuaded that decision to lay-off four inside union organizers made without anti-union animus - Application allowed - Reinstatement with compensation ordered
- SIDUS SYSTEMS INC.; RE USWA ..... (June) 873
- Practice and Procedure - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board not permitting union to amend its application mid-way through employer's case - Board unable to accept employer's explanation for discharging key union supporter - Application allowed - Reinstatement with compensation ordered
- ATLANTIC PACKAGING PRODUCTS LTD.; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA ..... (Sept.) 1147
- Practice and Procedure - Discharge - Duty of Fair Representation - Health and Safety - Unfair Labour Practice - Probationary employee's earlier health and safety discharge complaint dismissed by Board - Employee now seeking reinstatement in new application by shifting focus to trade union and alleging breaches of *Labour Relations Act* - Board unable to discern any labour relations purpose for inquiring into complaint - Complaint dismissed
- WILLIAM J. VIVEEN; RE USWA, LOCAL 7135; RE NATIONAL STEEL CAR LIMITED ..... (Jan.) 85
- Practice and Procedure - Discharge - Evidence - Health and Safety - Applicant alleging violation of *Occupational Health and Safety Act* on basis of discharge described as reprisal for complaint of sexual harassment in workplace - Board declining to dismiss application without a hearing for want of *prima facie* case
- LYNDHURST HOSPITAL; RE PAULINE AU ..... (Nov.) 1371
- Practice and Procedure - Evidence - Related Employer - Sale of a Business - Related Employer - Unfair Labour Practice - Employer objecting to certain line of questions to be raised by union on grounds of solicitor-client privilege - Board not prepared to establish exception to solicitor-client privilege on basis of assertion that purpose the solicitor-client communication was to facilitate breach of the Act - Objection upheld
- CAREFUL HAND LAUNDRY AND DRY CLEANERS LIMITED, KIRLIN LEASING LIMITED; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSMEN AND HELPERS OF AMERICA ..... (May) 627
- Practice and Procedure - Parties - Strike - Timeliness - Termination - Steelworkers' union alleging that termination application untimely as having been brought within six months of commencement of strike - Employer disputing that strike occurred - Board rejecting union's submission that employer ought not to be permitted to intervene in application to raise strike issue - Board finding that picketing by bargaining unit members was concerted activ-

ity intended to restrict or limit output (although it did not have that effect) - Application dismissed as untimely

METRO TAXI LTD. C.O.B. AS CAPITAL TAXI; RE RAM SEENANAN, ON HIS BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF METRO TAXI LTD. C.O.B. AS CAPITAL TAXI, OPERATING AS TAXI OWNERS AND/OR TAXI DRIVERS; RE USWA ..... (Nov.)

1378

Practice and Procedure - Unfair Labour Practice - Union seeking leave to withdraw unfair labour practice complaint - Employer asking that withdrawal be on "with prejudice" basis - Board explaining that it is not its practice to require parties to seeking to withdraw a complaint to do so on "with prejudice" basis - Questions related to abuse of Board's processes can be raised in subsequent application, if any - Board granting applicant leave to withdraw application

DOMTAR INC., BUNTIN-REID DIVISION OF, FRED MCNAUGHT, STEVEN KENDALL, KEVIN WOODISON, LARRY KITTS AND IAN SMITH; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA AND ITS LOCAL 1291..... (Mar.)

266

Pre-Hearing Vote - Certification - Board rejecting submission of intervenor in certification application to postpone pre-hearing vote - Board noting that a representation vote should be taken as quickly as is reasonably feasible and practicably convenient for the principal parties, being the applicant trade union and the responding employer

QUEEN'S UNIVERSITY AT KINGSTON; RE QUEEN'S UNIVERSITY FACULTY ASSOCIATION; RE THOMAS HARRIS AND OTHERS ..... (Sept.)

1213

Pre-Hearing Vote - Certification - Construction Industry - Membership Evidence - Petition - CLAC applying to displace Sheet Metal Workers' union as bargaining agent for employer's employees - Board rejecting Sheet Metal's assertion that membership evidence filed by CLAC nullified by subsequent reaffirmations signed by employer's employees - Reaffirmations having no effect on employees' membership in CLAC and, accordingly, having no effect on CLAC's level of membership support - Board also applying *Knob Hill Farms* case in determining that there is no place for change of heart documents in pre-hearing vote proceeding

COVERTITE EASTERN LIMITED; RE CLAC, CONSTRUCTION WORKERS LOCAL 52; RE SMW, LOCAL 47 ..... (June)

729

Pre-Hearing Vote - Certification - Evidence - Membership Evidence - Board finding that membership evidence stating that employee applying for membership and agreeing to be bound by union's constitution satisfying statutory requirement in section 9 of the Act - Board adopting and applying decision in *Knob Hill Farms* case - Certificate issuing

OTTAWA BOARD OF EDUCATION; RE EDUCATION SUPPORT STAFF ASSOCIATION; RE CUPE, LOCAL 1400..... (May)

663

Pre-Hearing Vote - Certification - Evidence - Membership Evidence - Petition - Union applying for certification and requesting pre-hearing vote under section 9 of the Act - Board earlier directing holding of pre-hearing representation vote over objection of employer - Employer submitting that Board without jurisdiction to conduct vote, count ballots or certify union - Board holding that documentary evidence indicating that employee applies for and accepts membership in trade union satisfies membership requirement in section 9 of the Act - Board further holding that, had it been required to decide the matter, documentary evidence in form of application for membership also satisfying requirement in section 9 - Board distinguishing between letter withdrawing support from union and one revoking union membership - Letters withdrawing support cannot have effect of dropping union's



level of membership so as to result in ballots cast in pre-hearing vote not being counted - Board directing that ballots be counted forthwith

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP OF EMPLOYEES ..... (Mar.) 303

Pre-Hearing Vote - Certification - Timeliness - Board concluding that Social Contract Act not rendering raiding union's application for certification untimely - Board directing that ballots cast in representation vote be counted

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO; RE OPSEU; RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 ..... (Jan.) 71

Ratification and Strike Vote - Construction Industry - Strike - Strike Replacement Workers - Union conducting strike vote amongst members who had been working in sewer and water-main sector for any employer, including members who had never worked for responding employer - Board determining that where an employer bargains individually with a union, and is neither bargaining in the I.C.I. sector, nor bound by an accreditation order, it is only the votes of employees of the particular employer that are to be taken into account for purposes of calculating the 60 per cent authorization required by section 73.1(2) of the Act - Strike vote not meeting requirements of section 73.1(2) of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

ELGIN CONSTRUCTION, 969774 ONTARIO LIMITED C.O.B. AS; RE LIUNA, LOCAL 1059 ..... (June) 783

Ratification and Strike Vote - Strike - Employee complaining that contract ratification vote preceded by insufficient notice, and that undue pressure was applied to accept contract offer - Board dismissing application for failing to disclose prima facie case

THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE DONNA GLOVER ET AL; RE UFCW, LOCALS 175 AND 633 ..... (Feb.) 178

Ratification and Strike Vote - Strike - Strike Replacement Workers - Board determining that those permitted to vote in strike vote not a proper voting constituency - Strike vote not meeting requirements of subsection 73.1(2)2 of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

J. FRANZE CONCRETE LTD.; RE LIUNA, LOCAL 1059 ..... (June) 813

Ratification and Strike Vote - Strike - Strike Replacement Workers - Board satisfied that union provided employees with secret ballot process that employees could opt out of (rather than the reverse) and that notice of vote provided employees with ample opportunity to vote - Vote satisfying conditions in section 73.1(2) of the Act

BUDGET CAR RENTALS TORONTO LIMITED; RE UFCW LOCAL 175 ..... (July) 931

Reconsideration - Certification - Constitutional Law - Employer's business including operation of mustard seed elevators - Employer seeking reconsideration of decision certifying union on ground that labour relations of employer falling in federal jurisdiction - Board not accepting argument that elevators operated by employer equivalent to elevators declared to be works for the general advantage of Canada under *Canada Grain Act* in that they perform similar function and should therefore also be found within federal jurisdiction - Board satisfied that employer's labour relations properly subject to provincial regulation - Reconsideration application dismissed

G.S. DUNN & CO. LIMITED; RE TEAMSTERS LOCAL UNION NO. 879 ..... (Feb.) 128

Reconsideration - Certification - Construction Industry - Employer applying for reconsideration and requesting "supplementary reasons" that would "fully canvass" the evidence - Applica-

- tion dismissed - Board not accepting that decision failed to indicate the evidence used to support the Board's findings - Request for further reasons dismissed
- BRADSCOT CONSTRUCTION LIMITED, BRADSCOT LIMITED, BRADSCOT MANAGEMENT LIMITED, BRADSCOT NORTHERN LIMITED, BRADSCOT WESTERN LIMITED AND BRADSCOT (MCL) LTD., R.D. PAINTING, AND ALBERTO HENRIQUEZ PAINTING & DECORATING; RE PAT ..... (Oct.) 1246
- Reconsideration - Certification - Judicial Review - Representation Vote - Board finding ballot cast in representation vote spoiled where ballot marked with heavy "X" in "No" circle and with light oblique line in "Yes" circle - Certificate issuing - Employer applying for reconsideration on ground that spoiled ballots should have been treated as "ballots cast" within meaning of section 9.1 of Act - Issue raised for first time in reconsideration application - Employer offering no reason why argument on ballots cast not raised earlier - Board also noting its established case law to effect that spoiled ballots are not included within "ballots cast" - Reconsideration application dismissed - Employer's application for judicial review dismissed by Divisional Court
- MAIDSTONE MANUFACTURING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND OLRB ..... (Mar.) 388
- Reconsideration - Duty of Fair Representation - Parties - Remedies - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor's discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed
- HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Dec.) 1437
- Reference - Constitutional Law - Board not convinced that meal catering an inherent part of operating an airline, nor that federal regulation of catering employees' labour relations essential to federal regulation of aeronautics - Board advising Minister that labour relations between union and airline caterer employer falling within provincial jurisdiction
- CATERAIR CHATEAU CANADA LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND IMPLEMENT WORKERS UNION OF CANADA (C.A.W.) AND ITS LOCAL 1990 ..... (May) 633
- Reference - Final Offer Vote - First Contract Arbitration - Employer applying to Minister of Labour for final offer vote under section 40 of Act after first contract arbitration initiated under section 41 - Whether Minister should direct vote - Board holding that section 40 contemplating availability of strike or lock-out activity as pre-condition to employer's right to request final offer vote - Initiation of first contract arbitration precluding strike or lock-out by virtue of subsection 40(13) of the Act, thereby foreclosing employer from requesting final offer vote - Board advising Minister not to direct vote
- ROYALGUARD VINYL CO. A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (Mar.) 349
- Reference - Hospital Labour Disputes Arbitration Act - Board advising Minister that "mother house" operated by order of nuns offering various services to its members, including care for aging members, not a "hospital" within meaning of Hospital Labour Disputes Arbitration Act
- MAISON MÈRE DES SOEURS DE LA CHARITÉ D'OTTAWA; RE CUPE, LOCAL 3101 ..... (July) 978
- Reference - Hospital Labour Disputes Arbitration Act - Board advising Minister that group home

providing attendant care to physically disabled adults a “hospital” within meaning of Hospital Labour Disputes Arbitration Act

NORTH YORKERS FOR DISABLED PERSONS INC.; RE SEIU, LOCAL 204 ... (July) 1001

Reference - Hospital Labour Disputes Arbitration Act - Board advising Minister that homemaker services programme operate by Red Cross not a “hospital” within meaning of Hospital Labour Disputes Arbitration Act

CANADIAN RED CROSS SOCIETY SOCIETY (ONTARIO DIVISION), THE; RE SEIU, LOCAL 204 (A.F.L., C.I.O., C.L.C.)..... (May) 612

Reference - Hospital Labour Disputes Arbitration Act - Board advising Minister that retirement residence a “hospital” within meaning of Hospital Labour Disputes Arbitration Act

GODERICH PLACE RETIREMENT RESIDENCE; SEU, LOCAL 210 ..... (Apr.) 416

Reference - Hospital Labour Disputes Arbitration Act - Board finding residential facility for aged or infirm to be “hospital” within meaning of *Hospital Labour Disputes Arbitration Act*

MEADOWCROFT PLACE (GUELPH), MEADOWCROFT HOLDINGS INC., C.O.B. AS EXECU-CARE NURSING SERVICES, 5M MANAGEMENT SERVICES LIMITED, AND MEADOWCROFT LIMITED PARTNERSHIP, C.O.B. AS; RE SEIU, LOCAL 532 ..... (Nov.) 1375

Related Employer - Abandonment - Bargaining Rights - Remedies - Sale of a Business - Responding parties submitting that related employer applications and sale of business applications made by Ironworkers’ union and Operating Engineers’ union ought to be dismissed because applicants had abandoned bargaining rights or had delayed in asserting bargaining rights or should be estopped from asserting their bargaining rights - Applications allowed - Board making declaration effective the date that the first application was filed, but exempting any projects which any responding party had contracted to perform but which was not completed prior to that date

PCL CONSTRUCTORS EASTERN INC.; RE BSOIW, LOCAL 765 ..... (Oct.) 1277

Related Employer - Constitutional Law - Sale of a Business - Whether labour relations of applicant falling within federal or provincial jurisdiction - Applicant engaged in farm input and grain merchandising business - Board not persuaded that operation of grain elevators, silos, retail store and other operations at particular site sufficiently integrated into operation of feed mill and feed warehouse situated there so as to be subject to federal regulation - Work of employees at other sites not sufficiently integrated with operation of various federal works situated there to fall within federal jurisdiction - Board concluding that it has constitutional jurisdiction to hear merits of application

LA CO-OPÉRATIVE DE POINTE-AUX-ROCHES, 1015195 ONTARIO LIMITED AND CHARLES DESMARAIS; RE UFCW, LOCAL 278W, AND CJA, LOCAL 3054; RE UNITED CO-OPERATIVE OF ONTARIO AND UCO PETROLEUM INC.; RE GROUP OF EMPLOYEES ..... (Feb.) 138

Related Employer - Construction Industry - Board not accepting submission that “GC” and “GG” not carrying on related activities because “GC” involved in non-profit housing and “GG” active in single family homes - Board finding both companies active in residential sector of construction sector - Board rejecting submission that “GC” and “GG” not under common control and direction where “GG” is wholly owned by “F” and “A”, and where “F” and “A” have legal ability to control “GC” through power to vote majority of shares of company owning “GC” - Related employer declaration issuing

THE GEORGIAN CONSTRUCTION COMPANY LIMITED; RE LIUNA, LOCAL 183 ..... (Mar.) 354



- Related Employer - Construction Industry - Construction Industry Grievance - Practice and Procedure - Sale of a Business - Union seeking pre-hearing production order - Board noting recent Divisional Court decision in *Goodman v. Rossi* and observing that there should be implied undertaking by a party to which documents are produced, although perhaps modified to suit its purpose - Responding employer given ten days to reply to union's request
- D'LUXE DRYWALL (1987), 737049 ONTARIO LTD. O/A; RE DRYWALL ACOUSTIC LATHING AND INSULATION LOCAL 675 ..... (Feb.) 112
- Related Employer - Duty to Bargain in Good Faith - Sale of a Business - Unfair Labour Practice - Teamsters' union and group of employees alleging sale of business and/or seeking related employer declaration in connection with transaction involving sale of retail MFM stores by Steinberg to A&P and closure of Steinberg's distribution centre - Teamsters' union and group of employees alleging that structure of sale transaction motivated by anti-unimism against Teamsters, that A&P breached Act by refusing to hire Steinberg distribution centre employees because of their membership in Teamsters, and that Steinberg bargained in bad faith by representing that collective agreement concessions would ensure job security and then selling Ontario operations and closing distribution warehouse - Applications dismissed
- STEINBERG INC. (MIRACLE FOOD MART DIVISION) AND THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE TEAMSTERS LOCAL UNION NO. 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; RE RWDSU, AFL CIO CLC AND ITS LOCAL 414 ..... (Oct.) 1309
- Related Employer - Evidence - Practice and Procedure - Sale of a Business - Unfair Labour Practice - Employer objecting to certain line of questions to be raised by union on grounds of solicitor-client privilege - Board not prepared to establish exception to solicitor-client privilege on basis of assertion that purpose the solicitor-client communication was to facilitate breach of the Act - Objection upheld
- CAREFUL HAND LAUNDRY AND DRY CLEANERS LIMITED, KIRLIN LEASING LIMITED; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA ..... (May) 627
- Related Employer - Remedies - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process
- DIAMOND TAXICAB ASSOCIATION (TORONTO) LIMITED, ET AL; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 1688 ..... (June) 753
- Remedies - Abandonment - Bargaining Rights - Related Employer - Sale of a Business - Responding parties submitting that related employer applications and sale of business applications made by Ironworkers' union and Operating Engineers' union ought to be dismissed because applicants had abandoned bargaining rights or had delayed in asserting bargaining rights or should be estopped from asserting their bargaining rights - Applications allowed - Board making declaration effective the date that the first application was filed, but exempting any projects which any responding party had contracted to perform but which was not completed prior to that date
- PCL CONSTRUCTORS EASTERN INC.; RE BSOIW, LOCAL 765 ..... (Oct.) 1277
- Remedies - Bargaining Unit - Combination of Bargaining Units - Board earlier combining newly certified service technician bargaining unit in Sudbury with pre-existing service technician

bargaining unit in southern Ontario - Union and employer agreeing on how to integrate the bargaining units, except for issue of wages - Parties returning to Board for its direction under subsection 7(5) of the Act - Board directing that Sudbury employees receive annual wage increases of 4 percent in 1993 and 1994

PREMARK CANADA INC.; RE IAM ..... (Mar.) 338

Remedies - Bargaining Unit - Combination of Bargaining Units - Board in earlier decision directing combination of employer's "parts" and "manufacturing" bargaining units and remaining seized with respect to remedial issues - Employer and union subsequently asking Board to determine unresolved seniority integration issue under section 7(5) of the Act - Board directing that seniority lists be "dovetailed" and that employees of both former "parts" and "manufacturing" bargaining units be credited with seniority from date of hire with the employer

FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION ..... (Feb.) 115

Remedies - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act

PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.) 505

Remedies - Collective Agreement - Duty to Bargain in Good Faith - Practice and Procedure - Unfair Labour Practice - Union claiming that employer violating its duty to bargain in good faith by refusing to sign collective agreement following vote by employees accepting employer's "final offer" - Employer failing to file response prior to commencement of hearing - Board applying Rule 19 and deeming employer to have accepted all of the facts stated in application - Board deciding case on material before it without necessity of hearing evidence - Application allowed and employer directed to sign collective agreement ratified by bargaining unit

K & SON MAINTENANCE CO. INC.; RE UFCW, LOCAL 175 ..... (Aug.) 1121

Remedies - Constitutional Law - Interim Relief - Employer operating mail sorting operation as part of network of companies providing private mail and courier service through North America - Board finding that employer's labour relations falling within federal jurisdiction - Application for interim relief dismissed

TANAT CANADA, A DIVISION OF G.D. EXPRESS WORLDWIDE CANADA INC.; RE CANADIAN UNION OF POSTAL WORKERS ..... (Apr.) 534

Remedies - Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Parties - Carpenters' union seeking damages in section 126 application, following finding by Board in earlier jurisdictional dispute complaint that its members ought to have been assigned certain work - Board denying Labourers' union standing to participate in hearing of section 126 application - Board applying decision in *Sayers & Associates* and holding that damages should be restricted to circumstances in which Board concludes that contractor/employer did not act reasonably, not those circumstances in which employer reasonably was wrong - Union not demonstrating that employer acted unreasonably and Board concluding that damages not warranted - Application dismissed

ROBERTSON YATES CORPORTATION LIMITED; RE CJA, LOCAL UNION 785; RE LIUNA ..... (Feb.) 158

- Remedies - Construction Industry - Interim Relief - Jurisdictional Dispute - Sheet Metal Workers' union and Plumbers' union disputing assignment of certain work involving installation of fan-powered boxes - Sheet Metal Workers seeking interim order restoring original assignment of disputed work - Application for interim order dismissed
- NIAGARA MECHANICAL CONTRACTORS, LESLIE BROTHERS INC., UA, LOCAL UNION 666; RE SMW, LOCAL 537..... (July) 997
- Remedies - Construction Industry - Interim Relief - Unfair Labour Practice - Applicant filing unfair labour practice complaint alleging that Shinglers' union bringing charges against him as result of his participation in other Board proceedings - Applicant in other Board proceedings alleging, amongst other things, that Shinglers' union not a "trade union" within meaning of the Act - Harm to applicant in perception of potential witnesses that applicant being singled out for punishment because of involvement in Board proceeding outweighing harm to union associated with restraint on conduct of internal union affairs - Board directing that internal union trial of applicant be postponed pending outcome of unfair labour practice complaint
- BROUWERS, HANK; RE CANADIAN UNION OF SHINGLERS AND ALLIED WORKERS ..... (Sept.) 1160
- Remedies - Damages - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - Board previously finding that employer violating the Act by using independent contractors to perform work of employee in bargaining unit - Board previously determining that cease and desist direction could not be framed which would prevent company from performing prohibited replacement work, while permitting it to continue to perform other than prohibited replacement work - Board rejecting employer's submission that damages order should not be made - Board ordering employer to pay union a sum equal to charges paid by it to independent contractors for deliveries which would have been attributable to bargaining unit member but for the strike
- NELSON QUARRY COMPANY; RE USWA ..... (May) 649
- Remedies - Discharge - Duty of Fair Representation - Unfair Labour Practice - Board earlier finding that union breached duty of fair representation and remaining seized with respect to remedy - Board directing that applicant's discharge grievance be referred to arbitration and that applicable time limits be waived - Board applying *Bellai Brothers* case in determining that Board without jurisdiction to award costs, as requested by applicant
- HILL, WILLIAM JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Oct.) 1249
- Remedies - Discharge - Interim Relief - Unfair Labour Practice - Union making unfair labour practice complaint in respect of discharge of member of union's bargaining committee and seeking interim reinstatement - Board not accepting employer's submission that balance of harm weighing in its favour because union already certified and because union delayed 17 days in bringing application and because of its assertion that it had no more work for electricians - Application allowed - Board directing that employee be reinstated pending disposition of unfair labour practice complaint
- VIDEOLUX CANADA INC.; USWA ..... (Sept.) 1231
- Remedies - Duty of Fair Representation - Parties - Reconsideration - Unfair Labour Practice - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor's discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed
- HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Dec.) 1437



Remedies - Interim Relief - Jurisdictional Dispute - Carpenters' union representing employees at employer's planning mill - IWA representing employees at employer's sawmill - Carpenters' union making jurisdictional dispute complaint in respect of employer's plan to consolidate operations of planning mill and sawmill at location of sawmill - Carpenters' seeking interim order preventing employer from relocating planning mill pending determination of jurisdictional dispute complaint - Interim relief application dismissed

TEMBEC FOREST PRODUCTS (1990) INC., IWA-CANADA, LOCAL 1-100 AND;  
RE CJA. LOCAL 1030..... (Jan.)

66

Remedies - Intimidation and Coercion - Unfair Labour Practice - Union complaining that employer took certain steps (including refusing to reinstate grievor, contracting out certain services and imposing hiring and purchasing freeze) in response to arbitration award - Union alleging that employer seeking to intimidate employees and their union, and to circumvent effect of award - Board allowing application - Board making various orders, including direction that employer cease and desist from proceeding further with contracting out process initiated earlier - Employer also prohibited from initiating consideration of or contracting out services performed by bargaining unit members for further period of 6 months

CORPORATION OF THE CITY OF NORTH YORK; RE CUPE, LOCAL 94 .... (Sept.)

1170

Remedies - Related Employer - Board declaring that some 128 associates of three taxi brokers, together with each of their respective brokers, should be treated as one employer for purposes of the Act - Board making additional orders and directions in accordance with earlier agreement made between union, brokers and group of 47 associates setting up bargaining infrastructure and giving associates formal role in negotiating process

DIAMOND TAXICAB ASSOCIATION (TORONTO) LIMITED, ET AL; RE RETAIL  
WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE  
USWA, LOCAL 1688 ..... (June)

753

Remedies - Sale of a Business - As a result of hospitals' amalgamation, group of 30 previously non-unionized employees combined with corresponding group of 60 unionized employees - Parties agreeing that union's bargaining rights extending to combined group - Union and employer agreeing that previously non-unionized employees to receive no recognition of earlier service for seniority purposes in areas of filling vacancies, lay-off protection and vacation scheduling - Previously non-unionized employees asking Board to make order under section 64(6)(e) of the Act effecting dovetailing of seniority lists - Board observing that where union and employer agree to resolution of seniority treatment issues, but matter comes to the Board at behest of small number of unhappy employees, Board will be less likely to disturb collective bargaining parties' agreement merely because Board might prefer different system - Intervenor employees' application dismissed

SAINT-VINCENT HOSPITAL, RESIDENCE SAINT-LOUIS, ELISABETH BRUYERE HEALTH CENTRE, VILLA MARGUERITE, SISTERS OF CHARITY OF OTTAWA HEALTH SERVICE, AND SISTERS OF CHARITY OF OTTAWA HOSPITAL; RE AAHP; RE LOUISE LAPORTE AND JILL NOWELL..... (May)

677

Remedies - Sale of a Business - Parties agreeing that ongoing rationalization of rehabilitation services previously provided by three Kingston hospitals constituting "sale of a business" - Board satisfied that process of rationalization sufficiently crystallized so as to constitute intermingling - Board asked to determine seniority issues under section 64(6) of the Act - Board directing that employees transferred into St. Mary's Hospital bargaining unit who had previously been employed at Hotel Dieu Hospital (subject to OPSEU collective agree-

ment) or Kingston General Hospital (subject to CUPE collective agreement) should have their accrued seniority recognized in full

ST. MARY'S OF THE LAKE HOSPITAL; RE OPSEU; RE KINGSTON GENERAL HOSPITAL, ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, THE RELIGIOUS HOSPITALLERS OF SAINT JOSEPH OF THE HOTEL DIEU OF KINGSTON (HOTEL DIEU HOSPITAL), EMPLOYEES' ASSOCIATION, ST. MARY'S OF THE LAKE HOSPITAL, CUPE AND ITS LOCAL 1974..... (Oct.)

1303

Remedies - Unfair Labour Practice - Union alleging that employer improperly denied leave of absence request made by key inside organizer responsible for union certification - Key organizer resigning - Key organizers's open and highly visible union activity coupled with lack of any direct evidence to explain company's decision leading Board to find that employer's conduct tainted by anti-union animus - Application allowed - Reinstatement ordered and Board remaining seized with respect to compensation

GREENBERG STORES LIMITED; RE USWA .....(Nov.)

1367

Representation Vote - Bargaining Unit - Certification - Employee - Judicial Review - Practice and Procedure - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues - Employer's application for judicial review dismissed

REYNOLDS-LEMMERZ INDUSTRIES; RE CAW-CANADA, OLRB .....(Jan.)

93

Representation Vote - Certification - Judicial Review - Reconsideration - Board finding ballot cast in representation vote spoiled where ballot marked with heavy "X" in "No" circle and with light oblique line in "Yes" circle - Certificate issuing - Employer applying for reconsideration on ground that spoiled ballots should have been treated as "ballots cast" within meaning of section 9.1 of Act - Issue raised for first time in reconsideration application - Employer offering no reason why argument on ballots cast not raised earlier - Board also noting its established case law to effect that spoiled ballots are not included within "ballots cast" - Reconsideration application dismissed - Employer's application for judicial review dismissed by Divisional Court

MAIDSTONE MANUFACTURING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND OLRB .....(Mar.)

388

Right of Access - Judicial Review - Picketing - Strike - Strike Replacement Workers - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer applying for judicial review - Union moving to strike out affidavit filed by employer in

pending application for judicial review on basis that it is admissible - Divisional Court ordering that affidavit be struck

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (Mar.)

392

Right of Access - Judicial Review - Picketing - Strike - Strike Replacement Workers - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer seeking judicial review - Divisional Court finding that Board exceeded its jurisdiction by failing to address and decide whether there was an exercise of the right to picket granted under subsection 11.1(3) of the *Act* before considering whether to exercise its discretion under subsection 11.1(5) to impose restrictions - Application for judicial review allowed

GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, THE; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (July)

1045

Sale of a Business - Abandonment - Bargaining Rights - Crown Transfer - Judicial Review - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed - Employer's application for judicial review dismissed by Divisional Court

HERITAGE GREEN SENIOR CENTRE; RE SEIU, LOCAL 532, OLRB AND ONTARIO MINISTRY OF HEALTH ..... (Sept.)

1236

Sale of a Business - Abandonment - Bargaining Rights - Related Employer - Remedies - Responding parties submitting that related employer applications and sale of business applications made by Ironworkers' union and Operating Engineers' union ought to be dismissed because applicants had abandoned bargaining rights or had delayed in asserting bargaining rights or should be estopped from asserting their bargaining rights - Applications allowed - Board making declaration effective the date that the first application was filed, but exempting any projects which any responding party had contracted to perform but which was not completed prior to that date

PCL CONSTRUCTORS EASTERN INC.; RE BSOIW, LOCAL 765 ..... (Oct.)

1277

Sale of a Business - Bargaining Rights - Collective Agreement - IATSE alleging sale of a business



from Ontario Place Corporation (OPC) to MCA Concerts Canada - Board determining that agreement between IATSE and OPC not a collective agreement, and that IATSE and OPC not having collective bargaining relationship - Application dismissed

ONTARIO PLACE CORPORATION AND MCA CONCERTS CANADA; RE IATSE, LOCAL 58..... (June)

840

Sale of a Business - Bargaining Unit - Parties agreeing that merger of North Bay Civic Hospital ("Civic") and St. Joseph's General Hospital ("St. Jo's") to form North Bay General Hospital amounting to sale of a business and that employees intermingled - CUPE representing employees in "all-employee" bargaining unit at the Civic - SEIU representing employees in three bargaining units at St. Jo's - Parties agreeing to determine representation issue on basis of representation vote, but not agreeing on whether to create one or two bargaining units - Board directing vote in single broadly-based unit

NORTH BAY GENERAL HOSPITAL; RE CUPE (LOCAL 139); RE SEIU, LOCAL 478 ..... (Nov.)

1401

Sale of a Business - Board finding sale of "part of a business" where successor having different "purpose" as a business than predecessor, but where successor producing same and similar products, using same machines on same premises aimed at same general market - Application allowed

SHIN HO CANADA LTD., SOLID WOOD RESEARCH INC.; RE IWA CANADA, LOCAL 2693..... (Sept.)

1217

Sale of a Business - Constitutional Law - Related Employer - Whether labour relations of applicant falling within federal or provincial jurisdiction - Applicant engaged in farm input and grain merchandising business - Board not persuaded that operation of grain elevators, silos, retail store and other operations at particular site sufficiently integrated into operation of feed mill and feed warehouse situated there so as to be subject to federal regulation - Work of employees at other sites not sufficiently integrated with operation of various federal works situated there to fall within federal jurisdiction - Board concluding that it has constitutional jurisdiction to hear merits of application

LA CO-OPÉRATIVE DE POINTE-AUX-ROCHES, 1015195 ONTARIO LIMITED AND CHARLES DESMARAI; RE UFCW, LOCAL 278W, AND CJA, LOCAL 3054; RE UNITED CO-OPERATIVE OF ONTARIO AND UCO PETROLEUM INC.; RE GROUP OF EMPLOYEES ..... (Feb.)

138

Sale of a Business - Construction Industry - Construction Industry Grievance - Practice and Procedure - Related Employer - Union seeking pre-hearing production order - Board noting recent Divisional Court decision in *Goodman v. Rossi* and observing that there should be implied undertaking by a party to which documents are produced, although perhaps modified to suit its purpose - Responding employer given ten days to reply to union's request

D'LUXE DRYWALL (1987), 737049 ONTARIO LTD. O/A; RE DRYWALL ACOUSTIC LATHING AND INSULATION LOCAL 675 ..... (Feb.)

112

Sale of a Business - Duty to Bargain in Good Faith - Related Employer - Unfair Labour Practice - Teamsters' union and group of employees alleging sale of business and/or seeking related employer declaration in connection with transaction involving sale of retail MFM stores by Steinberg to A&P and closure of Steinberg's distribution centre - Teamsters' union and group of employees alleging that structure of sale transaction motivated by anti-unimur against Teamsters, that A&P breached Act by refusing to hire Steinberg distribution centre employees because of their membership in Teamsters, and that Steinberg bargained in bad

faith by representing that collective agreement concessions would ensure job security and then selling Ontario operations and closing distribution warehouse - Applications dismissed

STEINBERG INC. (MIRACLE FOOD MART DIVISION) AND THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE TEAMSTERS LOCAL UNION NO. 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; RE RWDSU, AFL CIO CLC AND ITS LOCAL 414 ..... (Oct.)

1309

Sale of a Business - Evidence - Practice and Procedure - Related Employer - Unfair Labour Practice - Employer objecting to certain line of questions to be raised by union on grounds of solicitor-client privilege - Board not prepared to establish exception to solicitor-client privilege on basis of assertion that purpose the solicitor-client communication was to facilitate breach of the Act - Objection upheld

CAREFUL HAND LAUNDRY AND DRY CLEANERS LIMITED, KIRLIN LEASING LIMITED; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSMEN AND HELPERS OF AMERICA..... (May)

627

Sale of a Business - Judicial Review - Union Alleging "sale of a business" where municipality cancelling its contract with transit company and "taking back" operation of municipality's transit system - Transit company found in earlier Board decision to be federal undertaking - *Labour Relations Act* amendments providing in section 64.1 that successor rights provisions applying to federal-to-provincial sales, but amendments coming into force only on January 1, 1993 - Respondents asserting that transaction occurred on December 31, 1992 and that section 64.1 of the Act having no application - Respondents also denying that transaction amounting to "sale of a business" - Board satisfied that by acquiring substantial part of work force previously employed by transit company, municipality transferring to itself an essential element of that business - Board concluding that municipality's hiring of employees on and after January 1, 1993 triggering sale and that section 64.1 of the Act applying to the transaction - Board finding and declaring sale of a business - Municipality applying for judicial review - Divisional Court quashing decision of the Board

CHARTERWAYS TRANSPORTATION LIMITED AND ONTARIO LABOUR RELATIONS BOARD, NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 222; RE THE CORPORATION OF THE TOWN OF AJAX .... (June)

907

Sale of a Business - Judicial Review - Union Alleging "sale of a business" where municipality cancelling its contract with transit company and "taking back" operation of municipality's transit system - Transit company found in earlier Board decision to be federal undertaking - *Labour Relations Act* amendments providing in section 64.1 that successor rights provisions applying to federal-to-provincial sales, but amendments coming into force only on January 1, 1993 - Respondents asserting that transaction occurred on December 31, 1992 and that section 64.1 of the Act having no application - Respondents also denying that transaction amounting to "sale of a business" - Board satisfied that by acquiring substantial part of work force previously employed by transit company, municipality transferring to itself an essential element of that business - Board concluding that municipality's hiring of employees on and after January 1, 1993 triggering sale and that section 64.1 of the Act applying to the transaction - Board finding and declaring sale of a business - Municipality applying for judicial review - Divisional Court quashing decision of the Board - Court of Appeal granting union's application for leave to appeal

CHARTERWAYS TRANSPORTATION LIMITED AND ONTARIO LABOUR RELATIONS BOARD, NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 222; RE THE CORPORATION OF THE TOWN OF AJAX ... (Sept.)

1236

Sale of a Business - Movie theatre purchased by non-profit group and converted into live theatre - Movie theatres's projectionists represented by IATSE - Live theatre employing no projectionists - Board concluding that vendor and purchaser engaged in different businesses, and that purchaser not acquiring "part of the business" within meaning of section 64 of the Act - IATSE's sale of a business application dismissed

KINGSBRIDGE THEATRE ON THE SQUARE (NIAGARA) INC., CINEPLEX ODEON CORPORATION AND/OR 796278 ONTARIO LIMITED AND/OR; RE IATSE, LOCAL 461 ..... (Jan.)

32

Sale of a Business - Parties agreeing that merger of hospitals constituting sale of a business - Hospital continuing to operate out of two locations - Hospital seeking merger of certain bargaining units represented by 3 different unions - Board not satisfied that hospital merger had yet resulted in intermingling so as to permit granting of relief under sub-section 64(6) of the Act - Application dismissed

PERTH AND SMITHS FALLS DISTRICT HOSPITAL; RE THE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO; RE ONA ..... (Oct.)

1293

Sale of a Business - Remedies - As a result of hospitals' amalgamation, group of 30 previously non-unionized employees combined with corresponding group of 60 unionized employees - Parties agreeing that union's bargaining rights extending to combined group - Union and employer agreeing that previously non-unionized employees to receive no recognition of earlier service for seniority purposes in areas of filling vacancies, lay-off protection and vacation scheduling - Previously non-unionized employees asking Board to make order under section 64(6)(e) of the Act effecting dovetailing of seniority lists - Board observing that where union and employer agree to resolution of seniority treatment issues, but matter comes to the Board at behest of small number of unhappy employees, Board will be less likely to disturb collective bargaining parties' agreement merely because Board might prefer different system - Intervenor employees' application dismissed

SAINT-VINCENT HOSPITAL, RESIDENCE SAINT-LOUIS, ELISABETH BRUYERE HEALTH CENTRE, VILLA MARGUERITE, SISTERS OF CHARITY OF OTTAWA HEALTH SERVICE, AND SISTERS OF CHARITY OF OTTAWA HOSPITAL; RE AAHP; RE LOUISE LAPORTE AND JILL NOWELL ..... (May)

677

Sale of a Business - Remedies - Parties agreeing that ongoing rationalization of rehabilitation services previously provided by three Kingston hospitals constituting "sale of a business" - Board satisfied that process of rationalization sufficiently crystallized so as to constitute intermingling - Board asked to determine seniority issues under section 64(6) of the Act - Board directing that employees transferred into St. Mary's Hospital bargaining unit who had previously been employed at Hotel Dieu Hospital (subject to OPSEU collective agreement) or Kingston General Hospital (subject to CUPE collective agreement) should have their accrued seniority recognized in full

ST. MARY'S OF THE LAKE HOSPITAL; RE OPSEU; RE KINGSTON GENERAL HOSPITAL, ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, THE RELIGIOUS HOSPITALERS OF SAINT JOSEPH OF THE HOTEL DIEU OF KINGSTON (HOTEL DIEU HOSPITAL), EMPLOYEES' ASSOCIATION, ST. MARY'S OF THE LAKE HOSPITAL, CUPE AND ITS LOCAL 1974 ..... (Oct.)

1303

Sale of a Business - Union alleging "sale of a business" where municipality cancelling its contract with transit company and "taking back" operation of municipality's transit system - Transit company found in earlier Board decision to be federal undertaking - *Labour Relations Act* amendments providing in section 64.2 that successor rights provisions applying to federal-to-provincial sales, but amendments coming into force only on January 1, 1993 - Respondents asserting that transaction occurred on December 31, 1992 and that section 64.2 of the Act having no application - Respondents also denying that transaction amount-



ing to “sale of a business” - Board satisfied that by acquiring substantial part of work force previously employed by transit company, municipality transferring to itself an essential element of that business - Board concluding that municipality’s hiring of employees on and after January 1, 1993 triggering sale and that section 64.1 of the Act applying to the transaction - Board finding and declaring sale of a business

CHARTERWAYS TRANSPORTATION LIMITED, THE CORPORATION OF THE TOWN OF AJAX; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 222 ..... (Feb.) 95

Sale of a Business - Woolworth terminating lease in shopping mall - Shopping mall pursuing Zellers as new tenant - Zellers and shopping mall negotiating new lease and expanding store - With exception of premises and five employees, nothing of Woolworth’s ending up in hands of Zellers - Union’s application alleging sale of business by Woolworth to Zellers dismissed  
ZELLERS INC., WOOLWORTH CANADA INC.; RE UFCW, LOCAL 175 ..... (Aug.) 1141

School Boards and Teachers Collective Negotiations Act - Consent to Prosecute - Duty of Fair Representation - Unfair Labour Practice - Applicant asserting that processing and resolution of policy grievance having negative impact on her and amounting to repudiation of collective agreement - Board noting that Bill 100 not containing duty of fair representation and that Labour Relations Act not applying to teachers - Duty of fair representation complaint dismissed - Applicant also seeking consent to prosecute union for alleged contravention of Bill 100 provision regarding binding effect of agreements on parties to the collective agreement and on teachers - Application for consent to prosecute dismissed  
AIKIA, RITVA; RE O.S.S.T.F. .... (Oct.) 1239

School Boards and Teachers Collective Negotiations Act - Strike - Strike Replacement Workers - Unfair Labour Practice - Whether school board employer may use teachers governed by Bill 100 to perform work of striking occasional teachers - Whether Bill 100 teachers can be required to perform work of striking occasional teachers - Board declining to inquire into application on grounds of “mootness”  
BOARD OF EDUCATION FOR THE CITY OF TORONTO, THE; RE THE ONTARIO SECONDARY SCHOOL TEACHERS’ FEDERATION DISTRICT 15; RE TTF, OPSEU AND OPSEU, LOCAL 595 ..... (May) 579

Sector Determination - Construction Industry - Judicial Review - Board finding construction of underground concrete water storage tank to be work in ICI sector of construction industry, and not in heavy engineering sector or sewer and watermain sector as asserted by Labourers’ union - Declaration issuing accordingly - Labourers’ application for judicial review dismissed by Divisional Court  
MATHEWS CONTRACTING INC., A BANKRUPT AND THE OLRB, CJA, LOCAL 18, COOPERS & LYBRAND LIMITED, TRUSTEE OF THE ESTATE OF; RE LIUNA ..... (Mar.) 391

Security Guards - Bargaining Unit - Certification - Board finding that bargaining unit consisting solely of casino’s surveillance staff constituting appropriate bargaining unit  
WINDSOR CASINO LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Feb.) 206

Settlement - Collective Agreement - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Duty to Bargain in Good Faith - Trusteeship - Unfair Labour Practice - Carpenters’ union Local 675 and Interior Systems Contractors’ Association (“ISCA”) apparently entering into settlement revising provisions of existing collective

agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA");  
RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL  
675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR  
DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND  
OTHER RELEVANT WORKERS .....(Aug.)

1082

Settlement - Unfair Labour Practice - Employee seeking to enforce settlement in which employer agreed to pay certain monies to applicant - Employer acknowledging that it has not complied with settlement - Board not accepting employer's submission that at time of settlement parties not *ad idem* because of misrepresentations and non-disclosure by applicant and counsel - Employer ordered to comply with settlement terms forthwith

BADLANDS, 487948 ONTARIO LIMITED AND PROPAN LTD., C.O.B. AS; RE  
DOFFY HAHN ..... (Sept.)

1154

Strike - Bargaining Rights - Constitutional Law - Lock-Out - Strike Replacement Workers - Trade Union - Unfair Labour Practice - American League and National League of Professional Baseball Clubs locking-out umpires represented by Association of Major League Umpires throughout United States and Canada - Board finding that umpires working in Toronto "employees" within meaning of Labour Relations Act, umpires' organization to be "trade union" within meaning of the Act, and that umpires' organization holding bargaining rights for umpires under Labour Relations Act - Board declaring lock-out of umpires in Ontario unlawful because parties failed to go through compulsory statutory conciliation process - Employment of replacement umpires likewise declared unlawful as contrary to section 73.1 of the Act

THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL  
BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE  
THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE  
BASEBALL PLAYERS ASSOCIATION ..... (Apr.)

540

Strike - Construction Industry - Ratification and Strike Vote - Strike Replacement Workers - Board determining that those permitted to vote in strike vote not a proper voting constituency - Strike vote not meeting requirements of subsection 73.1(2)2 of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

J. FRANZE CONCRETE LTD.; RE LIUNA, LOCAL 1059 ..... (June)

813

Strike - Construction Industry - Ratification and Strike Vote - Strike Replacement Workers - Union conducting strike vote amongst members who had been working in sewer and water-main sector for any employer, including members who had never worked for responding employer - Board determining that where an employer bargains individually with a union, and is neither bargaining in the I.C.I. sector, nor bound by an accreditation order, it is only the votes of employees of the particular employer that are to be taken into account for pur-

poses of calculating the 60 per cent authorization required by section 73.1(2) of the Act - Strike vote not meeting requirements of section 73.1(2) of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

ELGIN CONSTRUCTION, 969774 ONTARIO LIMITED C.O.B. AS; RE LIUNA, LOCAL 1059..... (June) 783

Strike - Damages - Lock-Out - Remedies - Strike Replacement Workers - Unfair Labour Practice - Board previously finding that employer violating the Act by using independent contractors to perform work of employee in bargaining unit - Board previously determining that cease and desist direction could not be framed which would prevent company from performing prohibited replacement work, while permitting it to continue to perform other than prohibited replacement work - Board rejecting employer's submission that damages order should not be made - Board ordering employer to pay union a sum equal to charges paid by it to independent contractors for deliveries which would have been attributable to bargaining unit member but for the strike

NELSON QUARRY COMPANY; RE USWA ..... (May) 649

Strike - Dependent Contractor - Lock-Out - Strike Replacement Workers - Unfair Labour Practice - Union representing bargaining unit of dependent contractors engaged in delivery of crushed stone - Quarry employer locking out bargaining unit and subsequently using services of independent brokers to pick up stone from quarry - Employer maintaining that work performed by independent brokers different than work performed by bargaining unit drivers - Union's complaint that employer violating strike replacement provisions allowed in part and dismissed in part - Board inviting parties' written submission regarding appropriate remedy

NELSON QUARRY COMPANY; RE USWA ..... (Jan.) 35

Strike - Intimidation and Coercion - Picketing - Unfair Labour Practice - Employer complaining that picketing by truckers on lawful strike violating Act by causing unlawful strike, and by interfering with statutory rights by intimidation and coercion - Employer also seeking restrictions on picketing under section 11.1 of the Act - Board dismissing unfair labour practice complaint and finding that right to operate business not derived from or dependent upon Labour Relations Act - Board dismissing application under section 11.1 on grounds that picketing not taking place on "premises" to which section 11.1 applies

NELSON QUARRY COMPANY; RE USWA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL UNION NO. 494 ..... (June) 825

Strike - Judicial Review - Picketing - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the Act by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the Act and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the Act dismissed - Employer applying for judicial review - Union moving to strike out affidavit filed by employer in



pending application for judicial review on basis that it is admissible - Divisional Court ordering that affidavit be struck

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB .....(Mar.)

392

Strike - Parties - Practice and Procedure - Timeliness - Termination - Steelworkers' union alleging that termination application untimely as having been brought within six months of commencement of strike - Employer disputing that strike occurred - Board rejecting union's submission that employer ought not to be permitted to intervene in application to raise strike issue - Board finding that picketing by bargaining unit members was concerted activity intended to restrict or limit output (although it did not have that effect) - Application dismissed as untimely

METRO TAXI LTD. C.O.B. AS CAPITAL TAXI; RE RAM SEENANAN, ON HIS BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF METRO TAXI LTD. C.O.B. AS CAPITAL TAXI, OPERATING AS TAXI OWNERS AND/OR TAXI DRIVERS; RE USWA .....(Nov.)

1378

Strike - Ratification and Strike Vote - Employee complaining that contract ratification vote preceded by insufficient notice, and that undue pressure was applied to accept contract offer - Board dismissing application for failing to disclose prima facie case

THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE DONNA GLOVER ET AL; RE UFCW, LOCALS 175 AND 633..... (Feb.)

178

Strike - Ratification and Strike Vote - Strike Replacement Workers - Board satisfied that union provided employees with secret ballot process that employees could opt out of (rather than the reverse) and that notice of vote provided employees with ample opportunity to vote - Vote satisfying conditions in section 73.1(2) of the Act

BUDGET CAR RENTALS TORONTO LIMITED; RE UFCW LOCAL 175..... (July)

931

Strike - School Boards and Teachers Collective Negotiations Act - Strike Replacement Workers - Unfair Labour Practice - Whether school board employer may use teachers governed by Bill 100 to perform work of striking occasional teachers - Whether Bill 100 teachers can be required to perform work of striking occasional teachers - Board declining to inquire into application on grounds of "mootness"

BOARD OF EDUCATION FOR THE CITY OF TORONTO, THE; RE THE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 15; RE TTF, OPSEU AND OPSEU, LOCAL 595 ..... (May)

579

Strike Replacement Workers - Bargaining Rights - Constitutional Law - Lock-Out - Strike - Trade Union - Unfair Labour Practice - American League and National League of Professional Baseball Clubs locking-out umpires represented by Association of Major League Umpires throughout United States and Canada - Board finding that umpires working in Toronto "employees" within meaning of Labour Relations Act, umpires' organization to be "trade union" within meaning of the Act, and that umpires' organization holding bargaining rights for umpires under Labour Relations Act - Board declaring lock-out of umpires in Ontario unlawful because parties failed to go through compulsory statutory con-

ciliation process - Employment of replacement umpires likewise declared unlawful as contrary to section 73.1 of the Act

THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION..... (Apr.)

540

Strike Replacement Workers - Construction Industry - Ratification and Strike Vote - Strike - Board determining that those permitted to vote in strike vote not a proper voting constituency - Strike vote not meeting requirements of subsection 73.1(2)2 of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

J. FRANZE CONCRETE LTD.; RE LIUNA, LOCAL 1059..... (June)

813

Strike Replacement Workers - Construction Industry - Ratification and Strike Vote - Strike - Union conducting strike vote amongst members who had been working in sewer and water-main sector for any employer, including members who had never worked for responding employer - Board determining that where an employer bargains individually with a union, and is neither bargaining in the I.C.I. sector, nor bound by an accreditation order, it is only the votes of employees of the particular employer that are to be taken into account for purposes of calculating the 60 per cent authorization required by section 73.1(2) of the Act - Strike vote not meeting requirements of section 73.1(2) of the Act - Union's application regarding alleged unlawful use of replacement workers dismissed

ELGIN CONSTRUCTION, 969774 ONTARIO LIMITED C.O.B. AS; RE LIUNA, LOCAL 1059..... (June)

783

Strike Replacement Workers - Damages - Lock-Out - Remedies - Strike - Unfair Labour Practice - Board previously finding that employer violating the Act by using independent contractors to perform work of employee in bargaining unit - Board previously determining that cease and desist direction could not be framed which would prevent company from performing prohibited replacement work, while permitting it to continue to perform other than prohibited replacement work - Board rejecting employer's submission that damages order should not be made - Board ordering employer to pay union a sum equal to charges paid by it to independent contractors for deliveries which would have been attributable to bargaining unit member but for the strike

NELSON QUARRY COMPANY; RE USWA ..... (May)

649

Strike Replacement Workers - Dependent Contractor - Lock-Out - Strike - Unfair Labour Practice - Union representing bargaining unit of dependent contractors engaged in delivery of crushed stone - Quarry employer locking out bargaining unit and subsequently using services of independent brokers to pick up stone from quarry - Employer maintaining that work performed by independent brokers different than work performed by bargaining unit drivers - Union's complaint that employer violating strike replacement provisions allowed in part and dismissed in part - Board inviting parties' written submission regarding appropriate remedy

NELSON QUARRY COMPANY; RE USWA ..... (Jan.)

35

Strike Replacement Workers - Judicial Review - Picketing - Strike - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the Act by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the Act and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of

employer's operations - Application under section 11.1 of the *Act* dismissed - Employer applying for judicial review - Union moving to strike out affidavit filed by employer in pending application for judicial review on basis that it is admissible - Divisional Court ordering that affidavit be struck

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB .....(Mar.)

392

Strike Replacement Workers - Judicial Review - Picketing - Strike - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer seeking judicial review - Divisional Court finding that Board exceeded its jurisdiction by failing to address and decide whether there was an exercise of the right to picket granted under subsection 11.1(3) of the *Act* before considering whether to exercise its discretion under subsection 11.1(5) to impose restrictions - Application for judicial review allowed

GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, THE; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB .....(July)

1045

Strike Replacement Workers - Ratification and Strike Vote - Strike - Board satisfied that union provided employees with secret ballot process that employees could opt out of (rather than the reverse) and that notice of vote provided employees with ample opportunity to vote - Vote satisfying conditions in section 73.1(2) of the *Act*

BUDGET CAR RENTALS TORONTO LIMITED; RE UFCW LOCAL 175 .....(July)

931

Strike Replacement Workers - Strike - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Whether school board employer may use teachers governed by Bill 100 to perform work of striking occasional teachers - Whether Bill 100 teachers can be required to perform work of striking occasional teachers - Board declining to inquire into application on grounds of "mootness"

BOARD OF EDUCATION FOR THE CITY OF TORONTO, THE; RE THE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 15; RE TTF, OPSEU AND OPSEU, LOCAL 595 .....(May)

579

Termination - Bargaining Unit - Bargaining Rights - Combination of Bargaining Units - Timeliness - Petition - Practice and Procedure - Three weeks following union's application to combine existing full-time and part-time bargaining units, employee in full-time unit filing application to terminate bargaining rights in that unit - Board finding it appropriate to consider and determine termination application prior to entertaining union's application to combine



bargaining units - Board satisfied that signatures on petition in support of termination application representing voluntary wishes of those who signed - Representation vote directed

SUEDON FOODS LTD. C.O.B. AS ELIZABETH STREET I.G.A.; RE UFCW, LOCAL 175 ..... (Feb.) 166

Termination - Certification - Crown Employees Collective Bargaining Act - Association of Law Officers of the Crown ("ALOC") applying to represent articling students employed in Ontario Public Service - Board finding that articling students already represented by Ontario Public Service Employees Union (OPSEU) - Certification application dismissed as untimely - Board also dismissing application to terminate OPSEU's bargaining rights in respect of articling students on ground that Act's provisions regarding termination after voluntary recognition not applying to designation of OPSEU as bargaining agent

CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY MANAGEMENT BOARD OF CABINET, THE; RE ASSOCIATION OF LAW OFFICERS OF THE CROWN; RE AMPCEO, OPSEU ..... (Dec.) 1424

Termination - Construction Industry - Evidence - Petition - Practice and Procedure - Termination application brought by husband of employer - Board finding that decision to bring termination application made in consultation with applicant's wife - Board adopting *Hurley Corporation* case and allowing responding party to make motion akin to non-suit motion without being put to its election as to whether or not to call evidence - Evidence not supporting finding of voluntariness - Application dismissed

D & E INSULATION, EVE SIGFRID, CARRYING ON BUSINESS AS; RE DONALD EPP; RE HFIA, LOCAL 95 ..... (June) 748

Termination - Parties - Practice and Procedure - Strike - Timeliness - Steelworkers' union alleging that termination application untimely as having been brought within six months of commencement of strike - Employer disputing that strike occurred - Board rejecting union's submission that employer ought not to be permitted to intervene in application to raise strike issue - Board finding that picketing by bargaining unit members was concerted activity intended to restrict or limit output (although it did not have that effect) - Application dismissed as untimely

METRO TAXI LTD. C.O.B. AS CAPITAL TAXI; RE RAM SEENANAN, ON HIS BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF METRO TAXI LTD. C.O.B. AS CAPITAL TAXI, OPERATING AS TAXI OWNERS AND/OR TAXI DRIVERS; RE USWA ..... (Nov.) 1378

Timeliness - Bargaining Unit - Bargaining Rights - Combination of Bargaining Units - Termination - Petition - Practice and Procedure - Three weeks following union's application to combine existing full-time and part-time bargaining units, employee in full-time unit filing application to terminate bargaining rights in that unit - Board finding it appropriate to consider and determine termination application prior to entertaining union's application to combine bargaining units - Board satisfied that signatures on petition in support of termination application representing voluntary wishes of those who signed - Representation vote directed

SUEDON FOODS LTD. C.O.B. AS ELIZABETH STREET I.G.A.; RE UFCW, LOCAL 175 ..... (Feb.) 166

Timeliness - Certification - Construction Industry - Ironworkers' union applying to represent its standard unit of ironworkers and apprentices - Employer submitting that ironworkers and all other employees represented by Machinists' union and that relevant collective agreement making certification application untimely - Board holding that Machinists' collective agreement not covering work in issue and not constituting bar to application - Certificates issuing

DINGWELL'S MACHINERY & SUPPLY LIMITED; RE BSOIW, LOCAL 759...(Aug.) 1058

Timeliness - Certification - Membership Evidence - Petition - Board finding certain petitions untimely where they were received by Board after date on which certification application was sent by registered mail - Board finding other petition timely where request to transfer petition from earlier withdrawn certification application to new application post-dated new certification application date - Board rejecting argument that membership evidence insufficient on grounds that cards failed to reflect witness to signature, that copy of membership evidence not forwarded to International union as required by union's constitution, that membership applications failed to contain language showing commitment to be bound to union's constitution, and that membership applications were confusing to employees - Board rejecting argument that membership evidence tainted by content of union's correspondence to employees making reference to Labour Relations Board - Board rejecting argument that Form A-4 filed by union unsatisfactory - Interim certificate issuing in respect of one application

OSHAWA GROUP LIMITED; RE UFCW, AFL-CIO-CLC ..... (Apr.)

477

Timeliness - Certification - Pre-Hearing Vote - Board concluding that Social Contract Act not rendering raiding union's application for certification untimely - Board directing that ballots cast in representation vote be counted

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO; RE OPSEU;  
RE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA,  
LOCAL 1962 ..... (Jan.)

71

Timeliness - Parties - Practice and Procedure - Strike - Termination - Steelworkers' union alleging that termination application untimely as having been brought within six months of commencement of strike - Employer disputing that strike occurred - Board rejecting union's submission that employer ought not to be permitted to intervene in application to raise strike issue - Board finding that picketing by bargaining unit members was concerted activity intended to restrict or limit output (although it did not have that effect) - Application dismissed as untimely

METRO TAXI LTD. C.O.B. AS CAPITAL TAXI; RE RAM SEENANAN, ON HIS  
BEHALF AND ON BEHALF OF A GROUP OF EMPLOYEES OF METRO TAXI  
LTD. C.O.B. AS CAPITAL TAXI, OPERATING AS TAXI OWNERS AND/OR TAXI  
DRIVERS; RE USWA ..... (Nov.)

1378

Trade Union - Bargaining Rights - Constitutional Law - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - American League and National League of Professional Baseball Clubs locking-out umpires represented by Association of Major League Umpires throughout United States and Canada - Board finding that umpires working in Toronto "employees" within meaning of Labour Relations Act, umpires' organization to be "trade union" within meaning of the Act, and that umpires' organization holding bargaining rights for umpires under Labour Relations Act - Board declaring lock-out of umpires in Ontario unlawful because parties failed to go through compulsory statutory conciliation process - Employment of replacement umpires likewise declared unlawful as contrary to section 73.1 of the Act

THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL  
BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE  
THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE  
BASEBALL PLAYERS ASSOCIATION ..... (Apr.)

540

Trade Union - Certification - Trade Union Status - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association hav-

ing no constitution and no members - Board finding that association not a trade union - Certificate issuing

KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA; RE EMPLOYEES' ASSOCIATION COMMITTEE OF KUBOTA.....(Apr.) 467

Trade Union Status - Certification - Trade Union - Steelworkers' union applying for certification at workplace with employees' association - Union arguing that association not a "trade union" within meaning of the Act and that Board should certify Steelworkers' without representation vote - Employees' association having twenty-year history of negotiating agreements with employer setting out terms and conditions of employment, but association having no constitution and no members - Board finding that association not a trade union - Certificate issuing

KUBOTA METAL CORPORATION FAHRAMET DIVISION; RE USWA; RE EMPLOYEES' ASSOCIATION COMMITTEE OF KUBOTA.....(Apr.) 467

Trusteeship - Collective Agreement - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Duty to Bargain in Good Faith - Settlement - Unfair Labour Practice - Carpenters' union Local 675 and Interior Systems Contractors' Association ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA"); RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL 675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND OTHER RELEVANT WORKERS .....(Aug.) 1082

Unfair Labour Practice - Arbitration - Crown Employees Collective Bargaining Act - Practice and Procedure - Board declining to defer unfair labour practice complaint dealing with abolition of certain positions to Grievance Settlement Board

CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, THE; RE OPSEU .....(Dec.) 1429

Unfair Labour Practice - Bargaining Rights - Constitutional Law - Lock-Out - Strike - Strike Replacement Workers - Trade Union - American League and National League of Professional Baseball Clubs locking-out umpires represented by Association of Major League Umpires throughout United States and Canada - Board finding that umpires working in Toronto "employees" within meaning of Labour Relations Act, umpires' organization to be "trade union" within meaning of the Act, and that umpires' organization holding bargaining rights for umpires under Labour Relations Act - Board declaring lock-out of umpires in Ontario unlawful because parties failed to go through compulsory statutory con-



ciliation process - Employment of replacement umpires likewise declared unlawful as contrary to section 73.1 of the Act

THE AMERICAN LEAGUE AND THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS AND THE TORONTO BLUE JAYS BASEBALL CLUB; RE THE ASSOCIATION OF MAJOR LEAGUE UMPIRES; RE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION ..... (Apr.)

540

Unfair Labour Practice - Certification - Certification Where Act Contravened - Constitutional Law - Intimidation and Coercion - Practice and Procedure - Notice of Constitutional Question not complying with amended Courts of Justice Act - Board not permitting employer to raise constitutional challenge given late stage at which it was raised - Board finding that employer violating Act and true wishes of employees cannot be ascertained where employer holding captive audience meetings, engaging in poster campaign, making threats to economic benefits and job security, making various disparaging remarks about union, giving instructions on seeking return of union cards, initiating anti-union petition, and disciplining and transferring union supporter - Certificate issuing

SHERATON FALLSVIEW HOTEL & CONFERENCE CENTRE, ROMZAP LTD. C.O.B. AS; RE CANADIAN HOTEL AND SERVICE WORKERS UNION ..... (Dec.)

1475

Unfair Labour Practice - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Remedies - Board finding that employer violating Act by removing in-plant organizer from work place for period of time and by materially assisting employees opposed to unionization - Board certifying union under section 9.2 of the Act

PCO SERVICES INC.; TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351; RE ALL TECHNICIANS AGAINST UNIONIZATION, MICHAEL A. RANKIN ..... (Apr.)

505

Unfair Labour Practice - Certification - Construction Industry - Discharge - Discharge for Union Activity - Evidence - Membership Evidence - Interference in Trade Unions - Board dismissing allegation that employer flooded target bargaining unit with new employees solely for purpose of defeating certification application - Board applying *Trades Qualification Act* and finding two contested individuals to be registered sheet metal workers for purposes of certification application - Board not considering unsigned membership evidence submitted on behalf of single employee - Board directing representation vote - Board finding no connection between certification application and employee's lay-off - Unfair labour practice complaint dismissed

HERITAGE MECHANICAL, #821120 ONTARIO INC., C.O.B. AS METTE PLUMBING, #821120 ONTARIO INC., C.O.B. AS HERITAGE M & E, DFC MECHANICAL CONTRACTORS LTD., #1022472 ONTARIO INC., C.O.B. AS; RE SMW, LOCAL 30 ..... (Mar.)

272

Unfair Labour Practice - Change in Working Condition - Board finding that certain changes made to employee benefit plans, including splitting of employee group into two pools for purpose of assessing claims experience and premium cost, violating statutory freeze

THE BRICK WAREHOUSE CORPORATION; RE SEU, LOCAL 268 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. .... (Apr.)

545

Unfair Labour Practice - Change in Working Conditions - Board finding that employer's discontinuation of short term benefits payable to laid off employee contrary to disability plan and violating statutory freeze

PEMBROKE CIVIC HOSPITAL; RE USWA ..... (Dec.)

1467

Unfair Labour Practice - Change in Working Conditions - Board rejecting union's claim that "freeze" obliging employer to give certain bargaining unit members 3 per cent wage increase, as result of "promise" allegedly in place when union applied for certification - Application dismissed

THE OTTAWA PUBLIC LIBRARY BOARD; RE THE OTTAWA-CARLETON PUBLIC EMPLOYEES UNION, LOCAL 503 .....(Mar.) 376

Unfair Labour Practice - Collective Agreement - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Duty to Bargain in Good Faith - Settlement - Trusteeship - Carpenters' union Local 675 and Interior Systems Contractors' Association ("ISCA") apparently entering into settlement revising provisions of existing collective agreement in ICI sector and establishing new collective agreement covering residential sector - Carpenters' Ontario Provincial Council, however, refusing to agree to ICI changes - Board finding, therefore, that settlement purporting to deal with ICI items of no force and effect - Bargaining parties never intending that there would be stand alone residential agreement, separate and distinct from situation in ICI sector - Accordingly, Board holding that when proposed ICI amendments rejected, basis for residential agreement discarded - Board finding that business manager acting in what he believed to be best interests of Local 675 and its members when he signed collective agreement without seeking member ratification - Business manager, however, violating duty of fair representation in assuring membership that he would not sign collective agreement granting concessions without consultation or ratification by members - Board finding that trusteeship imposed on Local 675 for just cause and that breach of section 84 of the Act, if any, a technical one for which no remedy necessary

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION OF ONTARIO ("ISCA"); RE DRYWALL ACOUSTIC LATHING AND INSULATION, LOCAL 675 ("LOCAL 675"); RE DOUG BICKLE, HENRY BICKLE, ROY WILLIAMSON, VICTOR DASILVA, IVO BODLOVIC AND WORKERS LISTED IN APPENDIX A AND OTHER RELEVANT WORKERS .....(Aug.) 1082

Unfair Labour Practice - Collective Agreement - Duty to Bargain in Good Faith - Practice and Procedure - Remedies - Union claiming that employer violating its duty to bargain in good faith by refusing to sign collective agreement following vote by employees accepting employer's "final offer" - Employer failing to file response prior to commencement of hearing - Board applying Rule 19 and deeming employer to have accepted all of the facts stated in application - Board deciding case on material before it without necessity of hearing evidence - Application allowed and employer directed to sign collective agreement ratified by bargaining unit

K & SON MAINTENANCE CO. INC.; RE UFCW, LOCAL 175.....(Aug.) 1121

Unfair Labour Practice - Consent to Prosecute - Duty of Fair Representation - School Boards and Teachers Collective Negotiations Act - Applicant asserting that processing and resolution of policy grievance having negative impact on her and amounting to repudiation of collective agreement - Board noting that Bill 100 not containing duty of fair representation and that Labour Relations Act not applying to teachers - Duty of fair representation complaint dismissed - Applicant also seeking consent to prosecute union for alleged contravention of Bill 100 provision regarding binding effect of agreements on parties to the collective agreement and on teachers - Application for consent to prosecute dismissed

AIKIA, RITVA; RE O.S.S.T.F. .... (Oct.) 1239

Unfair Labour Practice - Construction Industry - Interim Relief - Remedies - Applicant filing unfair labour practice complaint alleging that Shinglers' union bringing charges against him as result of his participation in other Board proceedings - Applicant in other Board proceedings alleging, amongst other things, that Shinglers' union not a "trade union" within

meaning of the Act - Harm to applicant in perception of potential witnesses that applicant being singled out for punishment because of involvement in Board proceeding outweighing harm to union associated with restraint on conduct of internal union affairs - Board directing that internal union trial of applicant be postponed pending outcome of unfair labour practice complaint

BROUWERS, HANK; RE CANADIAN UNION OF SHINGLERS AND ALLIED WORKERS ..... (Sept.)

1160

Unfair Labour Practice - Damages - Lock-Out - Remedies - Strike - Strike Replacement Workers - Board previously finding that employer violating the Act by using independent contractors to perform work of employee in bargaining unit - Board previously determining that cease and desist direction could not be framed which would prevent company from performing prohibited replacement work, while permitting it to continue to perform other than prohibited replacement work - Board rejecting employer's submission that damages order should not be made - Board ordering employer to pay union a sum equal to charges paid by it to independent contractors for deliveries which would have been attributable to bargaining unit member but for the strike

NELSON QUARRY COMPANY; RE USWA ..... (May)

649

Unfair Labour Practice - Dependent Contractor - Lock-Out - Strike - Strike Replacement Workers - Union representing bargaining unit of dependent contractors engaged in delivery of crushed stone - Quarry employer locking out bargaining unit and subsequently using services of independent brokers to pick up stone from quarry - Employer maintaining that work performed by independent brokers different than work performed by bargaining unit drivers - Union's complaint that employer violating strike replacement provisions allowed in part and dismissed in part - Board inviting parties' written submission regarding appropriate remedy

NELSON QUARRY COMPANY; RE USWA ..... (Jan.)

35

Unfair Labour Practice - Discharge - Discharge for Union Activity - Evidence - Interference in Trade Unions - Practice and Procedure - Witness - Board not permitting employer to "split its case" and declining to permit it to call certain witness in reply - Board not persuaded that decision to lay-off four inside union organizers made without anti-union animus - Application allowed - Reinstatement with compensation ordered

SIDUS SYSTEMS INC.; RE USWA ..... (June)

873

Unfair Labour Practice - Discharge - Discharge for Union Activity - Practice and Procedure - Board not permitting union to amend its application mid-way through employer's case - Board unable to accept employer's explanation for discharging key union supporter - Application allowed - Reinstatement with compensation ordered

ATLANTIC PACKAGING PRODUCTS LTD.; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA ..... (Sept.)

1147

Unfair Labour Practice - Discharge - Duty of Fair Representation - Health and Safety - Practice and Procedure - Probationary employee's earlier health and safety discharge complaint dismissed by Board - Employee now seeking reinstatement in new application by shifting focus to trade union and alleging breaches of *Labour Relations Act* - Board unable to discern any labour relations purpose for inquiring into complaint - Complaint dismissed

WILLIAM J. VIVEEN; RE USWA, LOCAL 7135; RE NATIONAL STEEL CAR LIMITED ..... (Jan.)

85

Unfair Labour Practice - Discharge - Duty of Fair Representation - Board finding no established "local union policy" of taking all discharge grievances to arbitration regardless of merit -



Board finding nothing improper in way in which applicant's grievance handled or considered - Application dismissed

ROLAND BERNARD; RE USWA; RE E.S. FOX LIMITED..... (Apr.) 524

Unfair Labour Practice - Discharge - Duty of Fair Representation - Board finding union's decision not to take applicant's discharge grievance to arbitration arbitrary and in bad faith, contrary to section 69 of the Act - Application granted - Board remitting question of remedy to parties

WILLIAM HILL JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Jan.) 21

Unfair Labour Practice - Discharge - Duty of Fair Representation - Judicial Review - Applicant alleging that union breached its duty of fair representation by failing to process his discharge grievance to arbitration - Board not satisfied that applicant's 23 month delay in bringing application satisfactorily explained - Board exercising its discretion against inquiring into application - Application dismissed - Application for judicial review dismissed by Divisional Court

ROBERT ROSS; RE NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION (CAW-CANADA) AND ITS LOCAL 195, NATIONAL AUTO RADIATOR MFG. CO. LTD. AND THE OLRB ..... (Oct.) 1353

Unfair Labour Practice - Discharge - Duty of Fair Representation - Judicial Review - Natural Justice - Complainant alleging that union violated its duty of fair representation in respect of various matters associated with arbitration hearing dealing with his discharge grievance, including selection of counsel, selection of arbitrator and preparation of the case - Board finding no fault with representation provided by union to complainant and dismissing application - Complainant seeking judicial review on various grounds, including alleged breach of rules of natural justice - Application for judicial review dismissed by Divisional Court

RICHARD A. POSIVY; RE CUPE, LOCAL 11, THE HYDRO ELECTRIC COMMISSION OF THE CORPORATION OF THE CITY OF NORTH YORK, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Apr.) 577

Unfair Labour Practice - Discharge - Duty of Fair Representation - Remedies - Board earlier finding that union breached duty of fair representation and remaining seized with respect to remedy - Board directing that applicant's discharge grievance be referred to arbitration and that applicable time limits be waived - Board applying *Bellai Brothers* case in determining that Board without jurisdiction to award costs, as requested by applicant

HILL, WILLIAM JR.; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Oct.) 1249

Unfair Labour Practice - Discharge - Duty of Fair Representation - Union's determination not to refer applicant's discharge grievance to arbitration tainted by inappropriate considerations - Union's conduct both arbitrary and taken in bad faith - Application allowed

COUPERUS, YVONNE; RE UNITED TEXTILE WORKERS OF AMERICA (LOCAL 478); RE C.S. BROOKS CORPORATION..... (Sept.) 1193

Unfair Labour Practice - Discharge - Interim Relief - Remedies - Union making unfair labour practice complaint in respect of discharge of member of union's bargaining committee and seeking interim reinstatement - Board not accepting employer's submission that balance of harm weighing in its favour because union already certified and because union delayed 17 days in bringing application and because of its assertion that it had no more work for electricians - Application allowed - Board directing that employee be reinstated pending disposition of unfair labour practice complaint

VIDEOLUX CANADA INC.; USWA ..... (Sept.) 1231

- Unfair Labour Practice - Discharge - Just Cause - Board finding that employer had just cause for discharging employee accusing of breaching company ticketing and receipting procedures - Application dismissed  
UNIT PARK; RE LIUNA, LOCAL 183 ..... (Feb.) 190
- Unfair Labour Practice - Duty of Fair Representation - Applicant alleging that union failed to represent him adequately in various dealings with employer - Board finding no substance in union's complaints - Application dismissed  
HAROLD GOLDSON; RE CAW CANADA, LOCAL 112; RE DE HAVILLAND INC. .... (Mar.) 266
- Unfair Labour Practice - Duty of Fair Representation - Parties - Reconsideration - Remedies - Board in earlier decisions finding that union violated duty of fair representation and directing that union arbitrate grievor's discharge grievance and waive any timeliness objections - Employer seeking reconsideration on various grounds including alleged lack of jurisdiction to make the remedial orders made - Reconsideration application dismissed  
HILL JR., WILLIAM; RE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938 ..... (Dec.) 1437
- Unfair Labour Practice - Duty to Bargain in Good Faith - Board finding that employer's removal of wage offer, in context of enormous upheaval caused by *Social Contract Act* and other expenditure reduction legislation in 1993, not amounting to bad faith bargaining - Application dismissed  
CORPORATION OF THE CITY OF THUNDER BAY, THE; RE CUPE - LOCAL 87 (INSIDE UNIT) ..... (Nov.) 1355
- Unfair Labour Practice - Duty to Bargain in Good Faith - Sale of a Business - Related Employer - Teamsters' union and group of employees alleging sale of business and/or seeking related employer declaration in connection with transaction involving sale of retail MFM stores by Steinberg to A&P and closure of Steinberg's distribution centre - Teamsters' union and group of employees alleging that structure of sale transaction motivated by anti-unibus against Teamsters, that A&P breached Act by refusing to hire Steinberg distribution centre employees because of their membership in Teamsters, and that Steinberg bargained in bad faith by representing that collective agreement concessions would ensure job security and then selling Ontario operations and closing distribution warehouse - Applications dismissed  
STEINBERG INC. (MIRACLE FOOD MART DIVISION) AND THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE TEAMSTERS LOCAL UNION NO. 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; RE RWDSU, AFL CIO CLC AND ITS LOCAL 414 ..... (Oct.) 1309
- Unfair Labour Practice - Evidence - Practice and Procedure - Sale of a Business - Related Employer - Employer objecting to certain line of questions to be raised by union on grounds of solicitor-client privilege - Board not prepared to establish exception to solicitor-client privilege on basis of assertion that purpose the solicitor-client communication was to facilitate breach of the Act - Objection upheld  
CAREFUL HAND LAUNDRY AND DRY CLEANERS LIMITED, KIRLIN LEASING LIMITED; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSMEN AND HELPERS OF AMERICA ..... (May) 627
- Unfair Labour Practice - Intimidation and Coercion - Picketing - Strike - Employer complaining that picketing by truckers on lawful strike violating Act by causing unlawful strike, and by interfering with statutory rights by intimidation and coercion - Employer also seeking

restrictions on picketing under section 11.1 of the *Act* - Board dismissing unfair labour practice complaint and finding that right to operate business not derived from or dependent upon Labour Relations Act - Board dismissing application under section 11.1 on grounds that picketing not taking place on "premises" to which section 11.1 applies

NELSON QUARRY COMPANY; RE USWA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL UNION NO. 494 ..... (June)

825

Unfair Labour Practice - Intimidation and Coercion - Remedies - Union complaining that employer took certain steps (including refusing to reinstate grievor, contracting out certain services and imposing hiring and purchasing freeze) in response to arbitration award - Union alleging that employer seeking to intimidate employees and their union, and to circumvent effect of award - Board allowing application - Board making various orders, including direction that employer cease and desist from proceeding further with contracting out process initiated earlier - Employer also prohibited from initiating consideration of or contracting out services performed by bargaining unit members for further period of 6 months

CORPORATION OF THE CITY OF NORTH YORK; RE CUPE, LOCAL 94 .... (Sept.)

1170

Unfair Labour Practice - Judicial Review - Picketing - Strike - Strike Replacement Workers - Right of Access - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer applying for judicial review - Union moving to strike out affidavit filed by employer in pending application for judicial review on basis that it is admissible - Divisional Court ordering that affidavit be struck

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (Mar.)

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Unfair Labour Practice - Judicial Review - Picketing - Strike - Strike Replacement Workers - Right of Access - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed - Employer seeking judicial review - Divisional Court finding that Board exceeded its jurisdiction by failing to address and decide whether there was an exercise of the right to picket granted under subsection



- 11.1(3) of the *Act* before considering whether to exercise its discretion under subsection 11.1(5) to impose restrictions - Application for judicial review allowed
- GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED, THE; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOCK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK, CLIFF SKINNER AND OLRB ..... (July) 1045
- Unfair Labour Practice - Practice and Procedure - Union seeking leave to withdraw unfair labour practice complaint - Employer asking that withdrawal be on "with prejudice" basis - Board explaining that it is not its practice to require parties to seeking to withdraw a complaint to do so on "with prejudice" basis - Questions related to abuse of Board's processes can be raised in subsequent application, if any - Board granting applicant leave to withdraw application
- DOMTAR INC., BUNTIN-REID DIVISION OF, FRED MCNAUGHT, STEVEN KENDALL, KEVIN WOODISON, LARRY KITTS AND IAN SMITH; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA AND ITS LOCAL 1291..... (Mar.) 266
- Unfair Labour Practice - Remedies - Union alleging that employer improperly denied leave of absence request made by key inside organizer responsible for union certification - Key organizer resigning - Key organizers's open and highly visible union activity coupled with lack of any direct evidence to explain company's decision leading Board to find that employer's conduct tainted by anti-union animus - Application allowed - Reinstatement ordered and Board remaining seized with respect to compensation
- GREENBERG STORES LIMITED; RE USWA ..... (Nov.) 1367
- Unfair Labour Practice - Settlement - Employee seeking to enforce settlement in which employer agreed to pay certain monies to applicant - Employer acknowledging that it has not complied with settlement - Board not accepting employer's submission that at time of settlement parties not *ad idem* because of misrepresentations and non-disclosure by applicant and counsel - Employer ordered to comply with settlement terms forthwith
- BADLANDS, 487948 ONTARIO LIMITED AND PROPAN LTD., C.O.B. AS; RE DOFFY HAHN ..... (Sept.) 1154
- Unfair Labour Practice - Strike - School Boards and Teachers Collective Negotiations Act - Strike Replacement Workers - Whether school board employer may use teachers governed by Bill 100 to perform work of striking occasional teachers - Whether Bill 100 teachers can be required to perform work of striking occasional teachers - Board declining to inquire into application on grounds of "mootness"
- BOARD OF EDUCATION FOR THE CITY OF TORONTO, THE; RE THE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 15; RE TTF, OPSEU AND OPSEU, LOCAL 595 ..... (May) 579
- Union Successor Status - Board finding that purported withdrawal of local union from international union ineffective at law - Union successorship application dismissed
- HILLSIDE TOWNHOUSES LIMITED; C.O.B. AS THE VICTORIA INN, THUNDER BAY; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73, CHARTERED BY H.E.R.E.; RE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73 CHARTERED BY H.E.R.E. .... (Aug.) 1075
- Union Successor Status - Board satisfied that signing merger agreement following ratification by members and that process of transferring "projectionist" members from various locals of

IATSE to Local 173, effecting transfer of “projectionist” jurisdiction in sense contemplated by IATSE constitution and within meaning of section 63 of the Act - Board declaring Local 173 to have acquired rights, privileges and duties of predecessor IATSE locals in respect of “projectionists”

FAMOUS PLAYERS INC. AND CINEPLEX ODEON CORPORATION ET AL,  
IATSE, LOCALS 105, 257, 357, 461, 467, 580, 582 & 634 AND; RE IATSE, LOCAL  
173 ..... (July) 954

Witness - Discharge - Discharge for Union Activity - Evidence - Interference in Trade Unions -  
Practice and Procedure - Unfair Labour Practice - Board not permitting employer to “split  
its case” and declining to permit it to call certain witness in reply - Board not persuaded  
that decision to lay-off four inside union organizers made without anti-union animus -  
Application allowed - Reinstatement with compensation ordered

SIDUS SYSTEMS INC.; RE USWA..... (June) 873















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ISSN 0383-4778



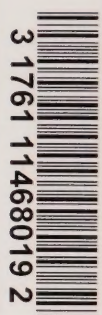












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